A HISTORY OF INDIAN LITERATURE

J. DUNCAN M. DERRETT

DHARMAŚĀSTRA AND JURIDICAL LITERATURE

OTTO HARRASSOWITZ · WIESBADEN

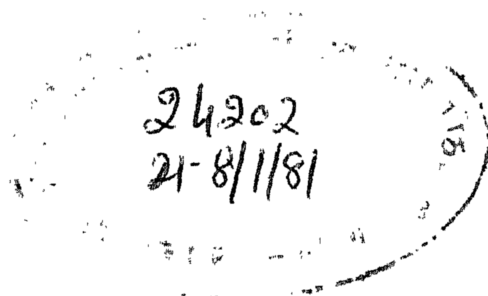
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DHARMAŚĀSTRA AND JURIDICAL LITERATURE

J. Duncan M. Derrett

Synopsis

1. *Introduction*

Dharmaśāstra means 'the teaching (or science) of righteousness'[1], and includes what the modern European understands by 'law,' without, however, exhausting that topic. The Asian idiom of norm-expression can easily be mistaken for law-teaching. India is not unique in this respect. The elaborate Indian texts dealing with legal procedure[2], no insignificant part of the dharmaśāstra (hereafter 'the *śāstra*'), could well mislead readers into assuming that the *śāstrīs* (professors of the *śāstra*) were laying down rules analogous to the iura, or even the leges of the Romans. India, in reality, shares with Islam and with Judaism the belief that righteousness is an independent science of greater importance than mere day-to-day administration, and that the teacher's duty is to exhort, and to set standards of conduct, based overtly upon transcendental considerations, recognising that decisions will be reached by judges, arbitrators, or others, upon principles of ethics, custom, or policy, but hoping that they would, if properly educated in righteousness, tend or endeavour to give a just decision. The assertion that Jesus of Nazareth was not a lawyer and did not occupy himself with law[3] is a symptom of the same misunderstanding, but with the opposite effect. In the ancient East, in teaching norms one treated of law and was to that extent a jurist, but one was much more. The Indian teacher of the techniques of dispute-settlement would indeed be a specialist in a branch of the śāstra; but unless he projected his study as a facet of the attainment of truth and enhancement of a supernatural order (not the mere quietening of complaints or enforcement of a royal policy) he would not be a dharmaśāstrī.

The historical passage from dharma to law forms a part of the successful study by R. Lingat[4]. It is not a story which is easy to summarise, as it is unfamiliar to Europeans, for whom the corresponding passage was from custom to law, a shorter step. It is easier to evaluate the task before the authors of the *śāstric* literature if we comprehend that what we understand as 'law'[5] did not then form a science; whereas the dharmaśāstra was the queen of the sciences. The *śāstrīs* appeared in a different guise from other writers and maintained a different outlook. They were not entertainers, nor mere purveyors of informa-

[1] On the meaning of *dharma*, Kane, HD I², 1–6. For Lingat see Bibliography below. K. G. Goswami Sastri, Calcutta Rev. 1938, 194–202. L. Rocher, 'Het positieve recht in het oude Indië . . .,' Indonesië 7 (1954), 296–319. J. Gonda at Tijdschrift voor Philosophie, 20 (1958), 220–268. R. C. Hazra, 'Dharma: its early meaning and scope,' OH, 7/1 (1959), 15–35; 8/1 (1960), 7–34. For Dharma as a deity see J. Gonda, JRAS, 1971/2, 120–33.

[2] S. Varadachariar, The Hindu Judicial System (Lucknow, 1946). L. Rocher, 'The theory of proof in ancient Hindu law,' La Preuve: Recueils de la Société Jean Bodin, 18 (1964), 325–71. S. S. Dhavan, 'Judiciary in ancient India,' Allahabad Univ. Law J. 2/1 (1967), 17–31. R. C. Hazra, 'The judicial *pramāṇas* . . . Gautama and others,' OH, 16/1 (1968), 1–56.

[3] P. Noll, Jesus und das Gesetz (Samm. gemein. Vorträge 253: Tübingen, 1968).

[4] Les Sources du Droit dans le Système traditionnel de l'Inde (The Hague, 1967). For the English edition see Bibliography below.

[5] Rules capable of being enforced by, or recognised as essential by, state courts.

tion. True, Indians have always enjoyed being told their duties. But it was never the object of the jurists to please (even when they were devising easier penances); it was to instruct. The personal contribution of the writer was submerged, or forgotten. Our basic sources (below, pp. 24–47) are pseudonymous and the scanty autobiographical details of commentators rather conceal than illuminate their personal involvement or even identity. Even the regions of origin of the latter may still be unknown. A requirement of any History, namely chronology, must therefore be prejudiced from the start.

No scholar, no matter if he were a great-grandfather, could expect his compositions to have any effect[6], to survive into several manuscript copies, unless he related the wisdom of ages in a contemporary guise. His name would add nothing to its value, which lay in its being accepted and transmitted as a true statement of transcendental verities. His work would be valued if it conformed to permanent values and agreed with life as it was lived. Jurists could not abrogate the past. The well-known theory of the Four Ages of the universe was an apology for the incapacity of contemporaries to observe dharma in its entirety[7]. There was no question of innovation. If a group of scholars wished to render previous writings obsolete[8] it was because they purported to digest, project and continue all that was worthwhile in the past—their effort was one of salvage, not abrogation. The skill of the *śāstrī* lay in teaching the authoritative texts accumulating in his hands as but one faithful link in the chain of good tradition. The behaviour of judges could not impair that tradition. Official obedience (at times) to the *śāstra* could not enhance the reputation of any *śāstrī*; indifference to it could not diminish his prestige. The śāstra taught what would give supreme bliss, or what would create *pāpa*, *aniṣṭa* ('sin'). No empirical art or science could compete with that.

The *śāstra* contains no rules of law which must be followed by judges on pain of illegality, but only precepts. These are addressed to the individual who performs the penance, instals an idol, dedicates a tank to the public's use, or does any act appertaining to *dharma*; some are addressed to the king (or his officer) regarding the keeping of the peace, detecting crime, awarding damages, imposing fines, etc.: a great many of them in the characteristic optative mood[9]. A precept may also be laid down in an impersonal form, that such-and-such a thing must be done to a person[10]. The word *arhati*[10a] is used of conduct the sub-

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[6] Medh. on Manu I, 9; V, 13. On 'human' authors (!) see Kane, HD, III, 827–9; V, 1259–60.

[7] See below, n. 157.

[8] See below, n. 331. Toḍarmal's object was more modest (below, n. 337).

[9] *syāt* (as at Manu VI, 1), *vaset* (ibid), *gacchet* (ibid. 3), *cintayet* (ibid. VII, 221); *vivāsayet* (ibid. VIII, 123), *prakalpayet* (ibid., 322, 324). Kane, HD, V, 1226. A twin optative, with different subjects: Manu IX, 279.

[10] *kāryo 'rdha-pādikaḥ* (Manu VIII, 325); *na sākṣī nṛpatiḥ kāryaḥ* (ibid., 65). *daṇḍyaḥ* (passim). An indicative negative followed by the optative of positive advice is illustrated by 'a smṛti' at Dh. k. 1589: *sthāvare vikrayo nāsti, kuryād ādhim anujñayā.*

[10a] As at Manu VIII, 323.

ject should do, or should suffer. Where legal *principles* differ, the court is placed in a dilemma; where they overlap it has a discretion; where they contradict each other it is paralysed. But in the realm of *precept* different teachings or clashing opinions are not fatal, for the one who makes the decision is equally protected whichever he opts to follow. He makes his prime decision when electing to follow any of them. Now to mistake precepts for principles is to risk misjudging the system. It is clear that the British (mistaking the *śāstra* for a system akin to Canon Law as they knew it) made this mistake; and their contributions to Indian legal literature must be viewed against this background. They had no inward knowledge of the civilization they undertook to protect, and thus could not have applied the precepts even if they had recognised them as such. The vast discretion of the Hindu judge of pre-British times could not figure in Anglo-Indian jurisprudence after about 1800, when the loose system of referring cases to arbitrators[11] ceased to prevail.

Dharma (from the root *dhṛ-*, 'to hold')[12] comprehends acts which a person is under any duty to fulfil *(iti-kartavyatā)*[13], provided that it has a moral, social, or superstitious significance, and does not arise from mere convenience.[14] The occult value of each performance is also within *dharma*. *Adharma* means the untoward effect of a prohibited act (including sin). *Dharma* is positive duty, *adharma* the reverse. Some customary practices are not within dharma if they have no occult value, but *dharma* may require non-deviation from śāstrically acceptable customary practices.[15] *Dharma* certainly comprehends crises such as in road accidents[16], and the compensating of persons who have been injured and the deterring of individuals who would otherwise be criminally negligent[17]. Methods of adjustment of rights in use in various regions may attain the honour of being incorporated in statements of *dharma*; but they may not, and there are many obvious gaps. It was an error on the part of eighteenth-century foreign students of the few *śāstric* texts then available to them to expect to find a complete code of law, ready-made, on European lines.

Dharma long preceded a literature devoted to it. The reflective classifying of actions arose first in Vedic times when intellectuals first became self-conscious about the variety of ritual performances. Ideas which had become unstable

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[11] Evidence of Boughton Rouse alluded to in Derrett, 'Nandakumar's forgery,' Eng. Hist. Rev. 1960, 235. J. Z. Holwell, *India Tracts* (cited by Derrett, RLSI, 275 n. 2).

[12] See n. 1 above.

[13] Medh. on Manu II, 6 *(yat puruṣasya kartavyaṃ pratyakṣādyavagamya-vilakṣaṇena svabhāvena śreyaḥ-sādhanam)*. Also Jaimini, Mīmāṃsāsūtra, I. 1, 1 *(codanā-lakṣaṇaḥ)*. A subjective definition: Somadevasūri, Nītivākyāmṛta, 8 *(abhyudaya-niḥśreyasa-siddhiḥ)*; Haradatta on Gaut. I. 1, 1 *(karma-janyo 'bhyudaya-niḥśreyasa-hetuḥ)*.

[14] Medh. cited in last n. Kane, HD, III, 835 (explaining Śabara on Jaimini I. 3, 4).

[15] Medh. on Manu VIII, 41, 46. Kane, HD, III, ch. 33.

[16] See below, n. 137.

[17] Texts quoted by G. Jha, HLS, I, ch. xvi.

or evanescent were trapped in verbal formulae; these originally related only to occult matters, or secular matters (like the sale of sacrificial materials) which were thought to have a great occult significance, and therefore required meticulous attention such as merely practical contexts did not yet demand. When the results of an act could be fully demonstrated (a 'seen' act)[18] no intellectual effort was called for. It was with regard to the so-called 'unseen' acts that sentiments and usages needed to be put down in solemn form before doubt fragmented them or reform overtook them. As we know from other contexts the effort to formulate and to commit to memory any description of behaviour (and still more its conventional justification) is an effort of creative genius of the first order. The desire to set what was fluid is one found at all ages, and has been experienced in Africa amongst social groups acting spontaneously[18a], utilising outsiders' help[19], or under political pressure[20]. When such a (falsely called) 'codification' has occurred it appeals strongly to other groups: those that are able to imitate it will do so, but others will plagiarise or adopt it, even if the practices do not wholly coincide[21]. It is extremely difficult for an illiterate group to say what its customs are[22], and a 'code' will be welcomed from a distance, and even incorrect statements will be tolerated with relief. Antiquated practices thus become fossilized, and obsolete usages retain a value on an occult basis: but this is a small price to pay for an objective criterion, and a taste of certainty. The migrations of peoples through India, the difficulties of communication, often braved (no doubt) and seldom without notable effect on the traveller and his section of society, the gradual enchantment of non-Aryan tribes and peoples with Aryan ideas and occult learning (not to speak of the charm exerted by a fair complexion!) lent value to little compendia of norms, and the

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[18] On the *dṛṣṭa-adṛṣṭa* dichotomy see Kane, HD, III, 827, 836–8.

[18a] The Basutos compiled the Laws of Lerotholi in c. 1900 (information supplied by A. N. Allott). The case nearest to that of many Hindu smṛti writers is that of the Basters of Namaqualand (S. W. Africa) (E. Fischer, Die Rehobother Bastards ..., Jena, 1913; W. P. Carstens, The Social Structure of a Cape Coloured Reserve, Cape Town, 1966) who, in 1872–4, spontaneously committed their laws to writing and recapitulated them (Law Book of the Rehoboth Bastards, in Union of S. Africa, Report of the Rehoboth Commission, U. G. 41–'26, Cape Town, 1927, 79–92) under the influence of the Bible and a memory of the existence of Roman-Dutch law (information supplied by N. Rubin).

[19] The Laws of Akim Abuakwa (of Ghana) were the fruit of the services of Registrar Dr. Danquah. A British officer in charge of Buganda courts produced a book on Baganda law.

[20] Since c. 1960 an official scheme to restate the customary laws of Tanzania has been afoot. The movement in Kenya: E. Cotran, Report on Customary Criminal Offences in Kenya (Nairobi, 1963); Report of the Commission on the Law of Marriage and Divorce (Nairobi, 1968); Report of the Commission on the Law of Succession (Nairobi, 1968).

[21] See below, n. 40.

[22] Kali Pennamma v. St. Paul's Convent 1972, Kerala Law Times 12. A people may have no provable custom at all (!): Kochan v. Mathevan AIR 1971 S. C. 1398.

increase of Aryanization must have owed as much to them as it spurred on their revision and elaboration.

Other ancient systems of jurisprudence would lead us to expect certain features in Indian written texts: some duly present themselves, some do not. India's special conditions of life, viz. the immense area, the coexistence of different levels of culture, different races and religions and mutually unintelligible languages, assisted the spread of an overarching systematic presentation of precepts, while preventing a descent to more than a superficial level of detail or beyond quite restricted practical instruction. Many demands of a system of law were never met. Yet daily purposes were in the front of the stage. No one now seriously believes that there is a pattern of human social development through which every society must pass[23]; yet it would be natural to expect the *śāstra* to conform to developments seen in Roman and Jewish law. Some early features are missing, or slightly represented because Gautama, for example, or Manu obliterated less perfect attempts on their predecessors' parts. But it may be that some features which would otherwise argue for maturity never arrive because India's special characteristics forced her to aim consistently at other goals.

This chapter of the History is concerned with the literature, and the reader is referred to the Handbuch der Orientalistik, Indien, and to the International Encyclopedia of Comparative Law, for brief accounts (respectively) of the content of the *śāstra* as related to its place in Indian law. Questions of intention, diction, style, method, and production will occupy us here, such as were posed by the two thousand and more works[24] that are available to us, or may be made available to us if our adequately-preserved manuscripts receive their just proportion of editorial attention.

2. *The longevity and flexibility of the literature*

The *śāstra*, even in its decadence, did not cease to respond to the needs of society, though (as is inevitable with a traditional science) it was in style and approach that adjustments were made, rather than in substance. Nineteenth-century authors, from the front-rank encyclopedist who wrote the Śukra-nīti-śāra[25] to the humble pandit or pandits who wrote the Śvaśrū-snuṣā-dhana-saṃvāda[26], still took (in the first instance silently, in the second overtly) as their basic authorities works composed centuries before in answering current questions, with respectable results. The literate public's interest in the ancient

[23] J. W. Burrow, Evolution and Society (Cambridge, 1966); A. S. Diamond, Primitive Law Past and Present (London, 1971), reviewed by B. S. Jackson, LQR, 88 (1972), 266–70.

[24] Kane, HD, I (1930), 677–760. Omission will have been balanced by doublets (works appearing under several names). An example of the riches awaiting enterprise is the Dvijarājodaya (S. L. Katre, NIA, 6/7 (1943), 145–55).

[25] Kane, HD, I², 272. L. Gopal, BSOAS, 25 (1962) 524–56.

[26] See below, n. 330.

science is not dormant[27] and the texts can still be put to practical use from time to time[28]. A late *smṛti* work under the name Parāśara[29] was republished with a Hindi commentary as recently as 1968[30].

It might be argued that the basic sources (below, pp. 24–47) stand out like islands in a lake of fluctuating opinion, and that here, as in other fields, the giants of the past (e.g. 'Manu,' and the Mitākṣarā ?) dominate, and must do so if the *śāstra* is to keep its character. Further, it may be objected that if the *śāstra* had been capable of original growth in this century the violent upheavals in the realm of family laws from 1955 onwards would not have occurred. The sources and the content of the rules in legal contexts were not subject to change at the option of any jurist. The Veda could not be denied as the ultimate source. This handicap, inherited from the era when a national conception of what was expedient was unthinkable, marks out the unreformed Hindu law as an archaic system strongest where it least contemplated change (as with the Jewish and Islamic laws also). Yet the mode of treatment tended to adjust to the times, and the style of presentation moved gradually with the public's needs; changes in tone and approach are very noticeable in the early British period, but they did not start then. We shall consider the motives and achievements of the *śāstric* writers rather than their opinions on controversial topics, which were so very numerous, but even so we shall find a good deal of room required merely to illustrate such features as are appropriate here.

The earliest surviving texts containing legal rules appear to be the brāhmaṇas and upaniṣads. The *saṃhitās* of the Veda only allude to such topics in passing[31]. Even the brāhmaṇas and upaniṣads do not seek to teach rules, though allusion to them is often poetically or pedagogically advantageous. *Dharma* was amongst their topics, and the commentators (below, pp. 47–59), who were concerned with law, often treated them as sources of authority. Moreover a self-conscious form through which norms might be stated and propagated preexisted Alexander the Great. Students and teachers already had their characteristic relationship as the Greek accounts testify[32]. Megasthenes (300–290 B.C.) found

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[27] R. L. Narasimham, J. Indian Law Inst., 11 (1969), 321–7. Justice K. Sadasivan, Kerala Law Times, 1972/1, Journal sect., 3–8 at p. 4.

[28] *Śāstric* sources are used in, e.g., Manorama v. Rama AIR 1957 Mad. 269; Guramma v. Mallappa AIR 1964 S. C. 510; Saraswathi v. Anantha AIR 1966 Ker. 66; Shibu v. Padu 1966 Kashmir Law J. 389, 396; Rabindra v. Narayan PLD 1967 Dacca 745; Shiromani v. Hemkumar AIR 1968 S. C. 1299; V. D. Dhanwatey v. C. I. T. AIR 1968 S. C. 683; Rajaram v. Bala (1970) 73 Bombay Law Reporter 766; Pichandi v. Ramaswami AIR 1971 Mad. 204; Laxmi v. Babu AIR 1973 Raj. 89.

[29] See below, p. 39.

[30] Ed. Daivajña-vācaspati Śrī Vāsudeva (Haridas Skt. Ser. 273, Chowkhamba Skt. Ser., Varanasi). Kāśinātha's Dharmasindhu (n. 366 below) was edited with a Hindi comm. of Vaśiṣṭha D. Miśra in the same series in 1968.

[31] The Dh. k. rightly includes Vedic material, manifestly differing from the other sources in style and scope.

[32] F. Jacoby, F. Gr. Hist. 715 F. 33 (59). J. W. McCrindle, Ancient India as described in Classical Literature (Westminster, 1901), 65; the same, Ancient India

administration of law going on without the need to refer to statute or written record[33]. The latest texts in the *śāstra* appear about the mid-nineteenth century[34]. The posts of Hindu Law Officers of the High Courts of Bombay, Calcutta, and Madras were abolished in 1864 and the incentive to write original works ceased. Fading for somewhat less than a century already, the *śāstra* came to an effective end then. It is still studied as a branch of Sanskrit, and as a school of traditional mores; the qualification of 'Shastry' is still sought, by a diminishing number of candidates. True the opinions of the jurists including Jagannātha Tarkapañcānana (fl. 1785) are still in use, for they were cited and expounded in judgments of the High Courts (1862–) and Supreme Court of India (1950–) without a break till today[35]. But this after-life is *sub modo*, for those that expound the law were not trained in the technique of the literature, and have no responsibility for its health and viability. Where the *śāstra* is still resorted to by the courts those who resort to it will hardly wish to be bound by it where its precepts are contradicted by their sense of utility, or where the will of the people, expressed in Parliament or in the State legislatures, has pushed *śāstric* ideas aside[36].

With a formal limit at 1864, we possess an enormous quantity of material superior in bulk and variety to the Roman law, and of more obvious continuity. Writers in about 1850 appeal to authors of the first millennium B.C.[37], and this rivals the comparable longevity of the Jewish law, in which modern writers cite not only the Torah of Moses but also authors living between 100 and 500 A.D. Roman law ceased to be applied not long after it reached literary perfection in the sixth century A.D., and Jewish law has not been applied since A.D. 135 in respect of penal law, nor since the beginning of the nineteenth century in respect of civil law (except, in minute areas, for marriage, divorce, and succession). But the *śāstra* was effective in respect of crimes as late as 1815 and contracts as late as the 1850's in some parts of India[37a], a few portions of the

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as described by Megasthenes and Arrian, 2nd edn. (Calcutta, 1960), 98–9. For the system see Kane, HD, II, 321–3; S. C. Banerji, JOR, 27/1–4 (1957–8), 74–8.

[33] Derrett, JAOS, 88/4 (1968) 780–1, referring to Jacoby, F. Gr. Hist. 715 F. 32.

[34] See below, n. 330. Derrett, RLSI, 270–1. Śarabhoji's Vyavahārārtha-smṛti-sāra-samuccaya (a simple digest of smṛtis: loan copy available from Tanjore S. S. M. Library) belongs to c. 1798–1833. Kane, HD, I, 631.

[35] See n. 28 above.

[36] Expression of opinion by Justice Ganesan in Kanna v. Krishnaswami AIR 1972 Mad. 247. For the Modern Hindu Law see Derrett, Critique of Modern Hindu Law (Bombay, 1970), and (Madras) Hindu Marriage (Madras Amendment) Act, 21 of 1967 (Critique, §. 383).

[37] The Śvaśrū-snuṣā-dhana-saṃvāda (at VI. 1) (n. 330 below) refers to the AB. VI. 7. See below, n. 97.

[37a] Derrett, RLSI, 264, 293–4. V. Parabrahma, Vyavahāra-darpaṇa, is of special interest. See also F. W. Macnaghten, Considerations on the Hindoo Law (Serampore, 1824), ch. 7 (taken from Jagannātha); T. L. Strange, Manual of Hindoo Law, 2nd edn. (Madras, 1863), ch. 14.

latter are in force still[38], and the whole of family law is available to be consulted and enforced, subject to the Indian reforms of 1955–6 (as subsequently amended) and subject to Hindus' having largely abandoned inter-caste marriage (now reviving slowly as a sign of cosmopolitan fashions within modern Hindu society). The courts frequently had difficulty in ascertaining and applying the *śāstric* rule, a misfortune springing from a literature which has largely been misunderstood. But the method adopted by the British since 1772 in Bengal, Bihar and Orissa, and later in other parts of the peninsula produced a uniformity and certainty which would have been impossible if that misunderstanding had not occurred.

The literature, no doubt as a result of conscious policy, retained a flexibility of a special kind beyond developing techniques. It was able to extend its appeal further and further into sections of the public which voluntarily came within its reach. More and more avenues were used to attract and hold attention, and this has by no means ceased. Within this pattern of cultural extension there lies the hard fact that in securing the approbation of the British administrators in 1772 *śāstrīs* of Bengal vindicated for the *śāstra* what was virtually a new field for Hinduism at its most consciously normative: they used their rulers as a means whereby what had formerly been of suasive authority reappeared as positive law.

3. *The responsibility of the jurists and the fate of their undertaking*

Before we turn to the authors and their works, their styles and their sources, we must reflect further on what they aimed to achieve. The need for a *śāstra* on this subject is shown by the texts' contents and stance. It was not enough that Hindus should know their customary laws, or that their village headmen, or, ultimately, their rulers could be relied on to enforce them. No literature might have emerged, had that been the case. Just as Eike von Repgow (fl. 1221) stated, interpreted and perhaps amended Saxon customary law in the Sachsenspiegel, so, but at an earlier period, Indians stated, analysed, and selectively amassed the customary laws of certain countries: in both cases the impetus came not from certainty and security, but the want of both. The peace, and the revenue, depended on justice. In a complex society the co-equal justness of divergent or even incompatible usages needed to be proved. By the time of the *dharma-sūtras*, when legal norms began to appear, when ritual and superstitious practices ceased to occupy *śāstrīs*' minds exclusively, the identity of customs, their appropriateness and authority were in grave and widespread doubt. The educational process, well known in India, whereby superior classes 'taught' inferior classes how to live, required that the customs of the former should be examined and recorded, so that there might be a standard against which all

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[38] The 'pious obligation' and '*damduppat*' for which see Derrett, Introduction to Modern Hindu Law (Bombay, 1963) or N. R. Raghavachariar, Hindu Law, 6th edn. (Madras, 1972).

status-seeking societies could be judged. Customs varied; the faculty of imitation required that some usages must be disapproved or neglected if others were to be propagated; some standards had to be forged by intensive observation and comparison, pursuing the effort of recording with an eager reflection upon what had been recorded; and the resulting intellectual essence (which did not codify any customary law) offered a mirror to the Hindu public in its wild diversity. This intellectual construct would enable it to expound its ways to lower classes (perhaps the nucleus of the *Śūdras*), and newly Hinduised tribes, which wished to improve their status and their supernatural expectations (e.g. a 'better' rebirth) by imitation—provided that by so doing they would not encroach upon the privileges of superior classes. The intricate task (not completed by the end of the twentieth century[39]) of inspiring the aspiring without encouraging them to infringe upon the property or the prestige of their 'betters' was successfully undertaken with delicacy and realism—reassuring the superiors that they were not threatened and reassuring the inferiors that their status as followers was, in *dharmic* terms, profitable to them.

As the Sachsenspiegel was adopted in many foreign areas, beyond Germany let alone beyond Saxony; and just as the town-laws of Magdeburg and other 'mother' cities were adopted in many new, less evolved communities, and authoritative interpretations of Magdeburg law in Magdeburg became law also for regions far from that city in distance and circumstances[40], so also in India caste after caste accepted *śāstric* works as authoritative though this was hardly contemplated by their authors, and ancient texts went to the length of declaring their habitats unclean and their example fit only to be shunned by the righteous[41]! As new texts issued in new areas they were taken up as authoritative, if sometimes rather less enthusiastically, in the 'mother' regions whence *dharma* was thought first to have set out on its missionary journey through the subcontinent[42]. The concept of local *dharma*, familiar to the *smṛtis*[43], gave way gradually to the concept of 'good custom' as a source of a general *dharma*[44]. Works of authority began to appeal primarily to the student-devotees of a particular *śākhā* of the Veda, but despite this claim to sectional loyalty they proceeded as if they were to be followed everywhere. Similarly sectarian works, aiming principally to instruct devotees of Viṣṇu or Śiva, entered the main stream of *śāstric* authority and were cited indifferently[45].

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[39] P. B. Gajendragadkar, Secularism (Bombay, 1971), ch. 12.

[40] G. Kisch, The Jews in Medieval Germany, 2nd edn. (New York, 1970), 62–4.

[41] V. N. Mandlik, Vyavahāra Mayūkha (Bombay, 1880), iii–vi. Kane HD, II, 134.

[42] Works from the Mithilā 'school' make scanty use of southern authors, which no doubt were known and consulted, however.

[43] Kane, HD, III, 858–62.

[44] Ibid., III, 825–7, 853—5; V, 1264, 1280.

[45] See below, p. 36.

The rules enshrined in our literature were repeated in maxims of statecraft and politics[46], in the epics[47], and in specialist works on ritual and on the plastic arts, where, as often, these impinged upon social needs: thus a work on architecture would contain ritual provisions, concerning itself with caste privileges, and therefore caste definitions, relating to the functionaries of that mystery[48]. In course of time a quantity of *śāstric* information, handily encapsulated in easily memorised verses, found its way into folk literature, and re-entered through an unexpected door the social milieu from which its inspiration originally came[49]. The Pañcatantra has an abundance of *śāstric* texts, not always aptly cited[50].

The jurists helped kings to find advisers who knew what the law ought to be, and particularly the law that demanded the loyalty of the prestige-bearing classes, Brahmins and Kṣatriyas; they took upon themselves the task of propounding law, *inter alia*, for all the subcontinent. They purported (as we have seen) to do much more than that, and yet much less. They taught the *dharma* of all the four castes *(cāturvarṇya)*. There never was an Indian law-book which contained all the rules any court would enforce. The Sanskrit word for law *(naya)* hardly figures in the literature. Records of customary rights of Punjab villages *(riwāj-i-ām)* compiled under the British[51] prove that such surveys could have been made at earlier periods, and jurists were at times aware of this[52]. Some industrious kings may well have compiled records of customs, and royal charters of customs must certainly have been enrolled in a record-house. But that it was a universal or consistent practice need not be supposed. Diet, climate, invasions, natural disasters (not to speak of indolence) would have frustrated even the most comprehensive and best-intentioned research. Thus the *śāstra* took an interest in custom, but jurisprudentially. It taught the king to evaluate custom and (optimistic as this seems) to abolish customs repugnant to *dharma*[53]. So prejudiced an approach could provide a study of custom in the abstract[54]; it could not codify customary law objectively.

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[46] Kauṭilya contains smṛti stanzas: Kane, HD, I², 185, 199–200. For a close examination of the examples see L. Sternbach, JAOS, 88 (1968), 719–20 (Manu), 721 (Kāty.) and Sternbach's chapter on Gnomic and didactic poetry in this History of Indian Literature.

[47] Kane, HD, I², 335–45, 353.

[48] Inscriptions studied by Derrett (n. 140 below).

[49] By way of the Cāṇakya-nīti collection. L. Sternbach, JAOS, 79/4 (1959), 233–54; ibid., 83/1 (1963), 49, 63, 64. The same, Juridical Studies in Ancient Indian Law (Delhi, 1967), II, ch. 26.

[50] L. Sternbach, Juridical Studies (cit. sup.), II, chh. 19, 22, 23.

[51] Digested by Rattigan, Digest of the Civil Law of the Punjab, 13th edn. (Allahabad, 1953).

[52] References at Derrett, RLSI, 162 n. 2.

[53] See last note.

[54] As in the Paribhāṣā-prakāśa of Mitra-miśra's Vīramitrodaya, or the Saṃskāra-kāṇḍa of Devaṇṇa-bhaṭṭa's Smṛticandrikā.

Since customs ought to be imitated outside their home-region only when they were reasonable and authentic, of long standing, approved by experts in the traditional culture, men in touch with the unseen world, and knowledgeable in the Veda, it followed that the teaching of customary law must be subordinate to teaching about righteousness, a universal requirement, easily exported. Neophytes would see that obedience would bring them near to supersensory merit, and at one blow foster their prestige and enhance their expectations from agriculture. For a king who enforced *dharma* did not suffer drought[55]: that theory was difficult to disprove if a sceptic ever dared to try[56].

Laws may be many, *dharma* is one. Perhaps before the more famous *sūtras* or *smṛtis* were written the theory gained ascendancy that all authoritative texts spoke with one voice, that all contradictions were only apparent[57]. Having avoided the difficulty posed by the changing of hundreds of customs spontaneously—not to speak of phases induced by imitation—the jurists found themselves in another, viz. that they must teach primarily by way of exhortation. Brahmins were warned that they risked excommunication for breach of a myriad of rules, the factual sediment of the *śāstra*[58]. Kings were warned that unless they strove to enforce the *śāstra's* principles, protecting the *cāturvarṇya*, they would suffer natural calamities, or the dreaded rule of the jungle *(mātsya-nyāya)*[59], in which the treasury and so the throne would collapse[60]. *Śāstrīs* promised rulers joys in Indra's heaven if they did the righteous and abtained from the unrighteous action. This was their message[61]. It called for a compassionate application in those very contexts (the king's policies) where rigour would have been more efficacious. But *dharma* is 'enforced' only by the long arm of fate. Law-in-action, amongst the Hindus, was amended piecemeal, unpredictably, on the basis of royal proclamation[62], in the slow uneven growth of court practice, and the gradual erosion of rules adopted into the *śāstra* under the pressure of customs which had never persuaded the jurist of their intrinsic worth. These developments paved the way for the modern phenomenon, observed since the legislative abolition of suttee at the latest, that whatever the unchanging *(sanātana*[63]*) dharma* may say, the rules running in the courts may answer to the

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[55] Manu III, 76, XII, 99. Kane, HD, III, 3.

[56] Cārvāka ideas are not reflected in *śāstric* works as they are in the Mahābhārata. Manu refers to sceptics at II, 10–11. Heretics: Kane, HD, III, 834–5, 843. Ballālasena does not use heterodox works: ibid., I, 340. Nāstikas: ibid., V, 1206.

[57] *eka-vākyatā-nyāya*. References at Kane, HD, V, 1341 (s.v.). Medh. on Manu VIII, 165.

[58] On *pātitya* and excommunication see Kane, HD, IV, 10–13, 105.

[59] Bhār. on Manu VIII, 130. Kane, HD, III, 21, 30.

[60] Kāty. 44–45; Nār. XVIII, 15. Kane HD, III, 26–7 touches on the 'right' of revolt.

[61] Manu VIII, 386–7. Nār. Introd. I, 74.

[62] Derrett, JAOS, 84/4 (1964), 392–5 (see Kane, HD, I², 569–70).

[63] On 'sanātanism' in the 'Hindu Code' controversy, Kane, HD, V, 1629. Swami Bharati Krishna Tirtha, Sanātana-dharma (Bombay, 1964).

ruler's pleasure, granted that the orthodox will repine thereat. The theoretical standards of the unseen world are not expected to be reproduced in the 'seen' world uniformly.

Thus the way was prepared for the statutory abolition of *śāstric* rules (e.g. 'sitting *dharna*') under the British[64], and the more recent introduction of institutions (e.g. divorce[65]) incompatible with the *śāstra*. The latter would, before 1772, be looked to, and its precepts used in difficult cases or where the basis of the State was somehow seen to be at risk. Abstaining from codifying custom, the jurists determined to aim at enlarging the *śāstra's* prestige with judicial advisers and the educated classes in positions of power, and (to that end) to develop jurisprudence as a science. But, undertaking that reasonable task they forfeited an opportunity to wed the public's love of its own particular customs to its belief in the overarching concept of righteousness. It ultimately accepted that righteousness is ever valid, but that the day-to-day practice had a temporary, secular validity irrespective of its truth or falsity in transcendental terms. The characteristic want of principle shown by Hindus in litigation[66], and their tolerance of visionary statutes[67], stem from this. Unlike Muslim law until the second half of the twentieth century, Hindu law has continuously been subject to variation in practice: the more readily for the knowledge that no legislature can tamper with *dharma*, which is beyond amendment. The jurists wrote for their own day, indeed, but under the eye of eternity. Some Sanskrit writers contemplated a time when *dharma* would no longer gain translation into practice, would no longer be the recognised norm[68]. This was not clairvoyance—it was a logical postulate from their original undertaking. Abhorrence of an inevitable eventual decadence acted as one of the main incitements to righteous living from the time Hindu society recovered from its last shocks of invasions and ravages of a predatory foe until the consolidation of British rule seemed to bring the 'prophecies' to pass[69].

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[64] J. Shore, Asiatic Researches[4] IV (1807), 330–2; Bṛh. X, 94. Kane, HD, III, 438. Bombay Regulation VII of 1820. R. Ranchhoddas and D. K. Thakore, Indian Penal Code, 22nd edn. (Bombay, 1959), 433 (comm. on Indian Penal Code, sec. 508). On British interference with Hindu traditional law: Kane, HD, III, 821, 972.

[65] Hindu Marriage Act, 1955. Previously: Bombay Hindu Divorce Act, XXII of 1947; Madras Hindu (Bigamy Prevention and Divorce) Act, VI of 1949.

[66] Derrett, RLSI, ch. 11; Critique of Modern Hindu Law, App. IV.

[67] E. g. the Dowry Prohibition Act, 28 of 1961.

[68] Viṣṇu-purāṇa IV, 24, VI, 1 (H. H. Wilson, The Vishnu Purana, ed. R. C. Hazra, Calcutta, 1961) (cf. Manu I, 82). For other references see V. R. Ramachandra Dikshitar, Purāṇa Index I (Madras 1951), 333–4 (s.v. Kaliyuga). Kane, HD, III, 923–6. Ṭoḍarānanda, I (1948), 384–5.

[69] 'Śukra' was chosen as pseudonym by the author of the Śukranītisāra (n. 25 above); in the Kali Age the ṛṣis associated with *dharma* (as contrasted with *nīti*) were no longer adequate authorities! The Mahānirvāṇa-tantra (late 18th cent.) contemplates Muslims and Hindus and perhaps Christians in religious communion (XI, 130). It repeats the condemnation of men of the Kali Age at I, 37–50; XI, 3–4.

4. *The limitations imposed by the task upon language and style*

A change overcomes Sanskrit between the metrical lawbooks and the digests (below, p. 52–7). The ancient sources have a spontaneity which suggests that Sanskrit was a living language amongst the leaders of intellectual life. The quality of versification is high, and not a few couplets, dealing with general principles of an 'unseen' character, or even with more mundane matters, have a beauty and appropriateness which, seeming facile, are the work of refinement[70]. On the other hand the 'bogus' *smṛtis* (pp. 19, 40) lack style, their versification is often poor[71]. It could afford to be so, it seems, since information, not delight, was the object of composition. The authenticity of ancient style is great. Imitators, when they do not copy their predecessors verbatim, deviate slightly, not always to advantage[72]. The hack took over from the artist. Coming to the digests and commentators we note a more limited linguistic apparatus. The commentator supplies synonyms for words even where no ambiguity was to be feared[73]. Commentators' sentences leave much to be desired. A tasteless, sprawling style develops, a lingua franca, owing perhaps its sometimes inconsequential meanderings to the influence of the Dravidian house language of many of its authors. Sanskrit, a vehicle for academic training, acquired the characteristics of the rather run-down Latin used in Europe in the fourth century. And India never entered a humanist phase in which vocabulary was purified, idiom revivified, and the technical literature interlarded with self-conscious cultural assertion. The *śāstrīs*' pedantry revelled, instead, in analysis, enumeration, and a search for ever more exhaustive treatment. Enumeration as an aid to learning and to the examination of students abounds in our *śāstra*[74] as it does in the Mishnah of the Jews[75]—similar needs produced similar techniques, in both cases in defiance of artistic requirements.

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[70] Manu VIII, 81 is well composed; XI, 238 is beautiful.

[71] Bṛhan-Manu (Dh. k., 1252): *brahmadāyāgatām bhūmiṃ hareyur brāhmaṇī-sutāḥ / gṛhaṃ dvijātayaḥ sarve tathā kṣetraṃ kramāgatam //* Matsya-purāṇa (Jha, HLS, I, 494; Dh. k., 1892): *adravyāṃ mṛta-patnīṃ* (sic) *tu saṅgṛhṇan nāparādhnuyāt / balāt parigṛhāṇas tu sarvasvaṃ daṇḍam arhati //* Skanda-purāṇa (Hemādri, Caturvarga-cintāmaṇi, Dāna-khaṇḍa, 1033): *yas tu vṛkṣaṃ prakurute chāyā-puṣpa-phalopagaṃ / pathi divye naraḥ pāpāt santārayati vai pitṝn //*

[72] Matsya-purāṇa (HLS, I, 494; Dh. k. 1892) is evidently based on (and a revision of?) Manu VIII, 364. 'Dakṣa's' jejune text in the Smṛticandrikā (HLS, I, 269) is based on classical models, the third line betraying the decadent touch.

[73] Lakṣmīdhara, Kṛtyakalpataru, Vyavahāra-kāṇḍa, 288: *dhānyaṃ vrīhi-yavādi.* Ibid., 433 *nisṛṣṭaṃ dattam.* But the glosses at 111 are probably useful. Vijñāneśvara, Mitākṣarā on Yājñ. II, 68: *dāna-śīlā dāna-niratāḥ, kulīnā mahā-kula-prasūtāḥ.* Space is wasted with such explanations. Nṛsiṃha-prasāda, Śrāddha-sāra, 47 exemplifies such a word-for-word interpretation even in a digest.

[74] Judicial procedure: Nār., Introd., I, 8–9; pledges: Bṛh. XI, 17 (HLS, I, 153); injuries: Bṛh. XX, 1; slaves: Manu VIII, 415; corrupters of women: Manu IX, 13; impotent men: Nār. XII, 11–13.

[75] E.g. Shebuoth I, 1 (H. Danby, The Mishnah, 1933, 408).

Though we know that the public demanded translations of Sanskrit authorities in medieval times[75a], translations of whole Sanskrit works into regional languages appeared very late. They acquired no authority[76]. The *śāstra* was so highly contextual that an acquaintance with its rules in the chapters, e.g. of succession, would not enable one to dispute with, still less to correct, a *śāstrī* whose education was in the original sources.

In what follows we may for the present confine ourselves to the *sūtra*, or epigrammatical, and *smṛti*, or metrical sources upon which the commentators worked. The beauties of Sanskrit lie usually in a crispness of diction, sonority of cadence, and contrast between assonance and dissimilarity of meaning. Play with sounds and with double meanings[76a] would have been expected; every opportunity might have been taken to exploit ambiguities and nuances. But the function of the *śāstra* would not tolerate overt ambiguity, and literary niceties must give way to practical exigencies. A digest-writer, or commentator, can place more or less ornate verses in his incipits or colophons, and that is all[77]. Our authors need to be short, to eschew repetition, to be unambiguous, plain, definite, unnuanced in their statements. Few of these latter were not injunctions, and most of them were exhortations ('so said Manu,' 'such is the eternal *dharma*'). Irrelevance, doubt, hesitation, subtlety (as, unfortunately, at Manu VIII. 332) were all out of place. Alternatives, where inevitable, must be few and clear. Normative passages might hover between the directory and the mandatory[78], for some readers might opt for the one interpretation, or the other. The recommendations of *dharma* must be stated, however, not implied or hinted. The only luxury was the arrangement of items in an order pleasant and memorable to the ear, if a choice seemed relevant, rather than logically desir-

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[75a] Annual Report (of Epigraphy) (South India) No. 558 of 1904 (12th cent.): see n. 140 below.

[76] A Telugu trans. of a part of the Mitākṣarā: Derrett, RLSI, 257 n. 1. M. Kandaswami Pulavar made a Tamil summary of the Smṛticandrikā in 1826 (Derrett, RLSI, 228 n. 1). The Vyavahāra-darpaṇa, ibid., 264. T. K. I. Ramanujacharya's Tamil trans. of Manu (Madras, 1907), and S. S. Parvatishankar's Gujarati trans. of Manu (Ahmedabad, 1941) were probably not intended to help with judicial work. From the last decades of the 19th century works provided to serve Anglo-Indian judicial administration accumulated: see British Museum catalogues of printed books in the Indian languages, indexes, s.v. Law; also India Office Library catalogues under the heading 'Law.'

[76a] A rare example of a play on words (*putra* = son/seedling), Matsya-purāṇa in Hemādri, Caturvarga-cintāmaṇi, Dāna-khaṇḍa, 1050: *daśa-kūpa-samā vāpī daśa-vapī-samo drumaḥ / daśa-druma-samaḥ putro, daśa-putra-samo drumaḥ //* For similar exaggerations of relative importance (a common *śāstric* idiom) see, e.g. Manu VIII, 338.

[77] Lakṣmīdhara, Kṛtyakalpataru, Vyavahāra-kāṇḍa has a single verse opening and then a *pratijñā* (table of contents) in 37 verses. Hemādri begins his sections with verses. Vijñāneśvara thought little verses desirable, e.g. at the commencement of the *dāyabhāga* section. Modern editions of *śāstric* works also favour verse prooemia.

[78] A problem for the British judiciary: Derrett, RLSI, 78–80.

able, letting the verse make its own logic[79]. Yājñavalkya III. 157 is more attractive in Sanskrit than in translation (it is about the qualifications whereby an ascetic may become immortal):

stryālokālambha-vigamaḥ sarva-bhūtātma-darśanam /
tyāgaḥ parigrahāṇāṃ ca jīrṇa-kāṣāya-dhāraṇam //

'Separation from seeing or touching women, apprehending all creatures as oneself [cf. III. 65], putting off all appurtenances [human and material] and putting on ragged ochre robes . . .'

On the other hand rules and propositions would seldom fill a stanza exactly: it was a commonplace for the jurist to complete his lines with 'soft' words having virtually no meaning[80]. And if his material slightly exceeded what his couplet could command, words such as *ādi* and *ca* were used (like our 'etc.') to include what the author had perforce to omit[81]. Or if the verse was too tight an essential *api* might be left out[82]. Some slovenly results ensued. Obsolete or ambiguous terms were tolerated[83] or even the use of the same word in two senses in close proximity[84]. The versifier must always watch the *avagraha* (mark of separation, apostrophe) carefully[85]. Hard lines might be tongue-twisters[86]. Ugly lines could occur having little precise meaning,[87] and there was the occasional bad verse which obscurely projected difficulties greater than any it solved[88]. Sometimes allusion was resorted to, which was hardly

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[79] Items quoted at p. 45 below.

[80] Pleonastic *tu*, *api* and *tathā* are common. *iti smṛtam* is as common as it is unnecessary. *tattvataḥ* (e.g. p. 23 below), *dharmataḥ* are line-fillers. Exigencies of metre are the excuse offered by commentators for awkwardnesses: Medh. on Manu I, 20, 30, 107; II, 6 (trans. G. Jha, I, 203) et alibi. Kane HD, I², 339. Pleonastic *iti sthitiḥ* is common, but *iti śāstra-viniścayaḥ* at Kāty. 638–9 is not a line-filler (Kāty. reconciles divergent smṛtis anteceding him).

[81] A famous example: Vijñāneśvara's (and others') reading and interpretation of Yājñ. II, 143c (Colebrooke II, xi, 1–6; cf. readings at Dh. k. 1443). In smṛti style *ca* often has an augmenting force: Vijñāneśvara on Yājñ. II, 135 (Nirṇayasāgara edn., 221; Colebrooke II. ii. 6); ibid., I, 45, 80, 132; III, 227. Bhār. on Manu VIII, 58, 190; IX, 231; X, 3. Medh. on Manu IX, 2. Kullūka on Manu II, 5; IV, 130. J. Jolly, Institutes of Vishnu, Introd., xxxv–vi. Rabbinical interpretation of scripture also attributes augmenting force to 'and.'

[82] Bhār. on Manu XI, 162.

[83] Kāty. 116 *(icchā-pravartaka)*; Manu VIII, 325 *(chūrikā, ardha-pādika)*, IX, 219 *(pracāra)*. Medh. on Manu IV, 152 (Jha, trans., 426–7).

[84] Manu VIII, 63–4 *(āptāḥ)*.

[85] *'lubdha* in Manu VIII, 77 (see variants at Dh. k. 257). The bad verse attributed (wrongly ?) to Kāty. by the Ṭoḍarānanda and the Vīramitrodaya (digest), Kane's edn., 466 (see his notes at 59, 207) creates infinite embarrassment.

[86] E.g. Yājñ. III, 276–7.

[87] Yājñ. II, 139 (an attempt to improve upon Manu IX, 211–12 ?): text and translation in chaos. Cryptic stanzas: below, n. 268.

[88] Manu VIII, 103, 188, 240, 252; IX, 122–3, 287.

informative[89], even allusion to other authors, with no assurance that the reader or hearer had acquired, let alone mastered, the text referred to[90].

In the prose portions of the *śāstra*, its greater bulk, vagueness could creep in, distracting and misleading for the newcomer. It was assumed that copies would not be acquired by the non-expert, or by one who did not have access to an expert. Works written nominally for beginners might be none too clear at all points[91]; but these are pitfalls into which authors of all ages have fallen.

The choice of vehicles will be raised below (pp. 24–5). We must postpone, too, the attention called for by the enframing or encapsulating of statements of *dharma* within mythical propositions. Yet we must note that unless a recommended *dharma* is plainly derived from ultimate antiquity and divine wisdom (found as a nominal source in western lawbooks too[92]) it lacks suasive force with a sceptical audience, whose problems cannot be solved by appeals to convenience or to any authority smacking of prejudice or bias. The apparently unnecessary or overelaborate framework thus subserves a real teaching function.

5. *The march of the śāstra: its development of techniques and absorption of topics*

In spite of linguistic handicaps, texts needed to have a fixed meaning, and required to be 'construed' according to canons of interpretation which utilised the literal sense, the sub-context, the wider context, and so on. It was assumed that the text was verbally authoritative, that its inspiration lay in the syllables themselves. From these meaning must be elicited. Context apart, short texts were customarily used to support arguments not obviously in their authors' minds: thus texts had two lives, within, and outside their contexts. Buddhist and Jain scholars, occupied in parallel tasks[93], denied the authority of the Veda. But

[89] E.g. Manu VII. 214–15.

[90] Kāty. cites Bhṛgu and Bṛh. frequently; Nār. and Manu refer to Vasiṣṭha. On the other hand Kāty. *mānavāḥ sadya* (823) alludes with adequate summary to Manu and Gautama (hardly verifiable: Kane's Kātyāyana-smṛti-sāroddhāra, 290 n.).

[91] The Bāla-krīḍā (below, p. 49) is at times cryptically concise. The Dāyabhāga portion is translated by S. Sitarama Sastri (Madras, 1900) and a comparison with Vijñāneśvara's Mitākṣarā (trans. by Colebrooke or Gharpure) at once reveals the advantage of the latter. For the expression *bāla-bodhārtham* see Kane, HD, I, 292.

[92] G. Kisch, op. cit., 316, 342. Until well into the 18th cent. (R. O'Sullivan, The Spirit of the Common Law, Tenbury Wells, 1965, chh. 3–4) it was accepted that fundamental law was natural law, upon which divine positive law rested, and positive human law was binding so far as it was not repugnant to these: natural and divine laws were treated as active sources of law (D. Lloyd, Introduction to Jurisprudence, 3rd edn., London 1972, ch. 3). In India what was propounded as a supernatural law took the place of 'natural law' in the West, and neither divine nor human legislation figured, intellectually.

[93] For Jaina law see C. R. Jain, Jaina Law (Madras, 1926); Padmaraja Pandita, A Treatise on Jaina Law and Usages (Bombay, 1886); R. Williams, Jaina Yoga (London, 1963). An example of Buddhist juridical work in Skt.: Sanghasena, ed., Sphuṭārtha Śrīghanācāra-saṅgraha-ṭīkā (Tib. Skt. Works Ser. 11: Patna, 1968). P. V. Bapat, ABORI, 52 (1971), 1–30 (on Buddhist law).

the orthodox *śāstrīs* became committed to the proposition that all authority was derived from the Veda ultimately. Vedic texts were thought to have been lost, when *smṛtis* could not be traced back to a surviving Vedic corpus[94]. *Smṛti* began to share Vedic infallibility, and was construed with the aid of the Mīmāṃsā, the science of construing Vedic ritual texts[95], not available to 'heretics.'

Texts of doubtful provenance and indeterminate merits thus acquired a certainty. Maxims existed whereby jurists reconciled texts seemingly conflicting[96]. Any viewpoint could be supported in most controversies. The Veda was cited (inappropriately, as philologists would contend) in many a legal quandary[97]. A flexibility emerged which was the despair of British observers. If canons of interpretation were established, it might be thought, differences of construction of texts would be progressively eliminated. On the contrary, the method was used in such a way that each scholar could, with the same equipment, arrive at original conclusions: this subserved the needs of a constantly varying public.

With this assurance of infinite adjustment to local requirements, the *śāstra* grew rapidly. Manuals for Brahmin practitioners in sacrifices, mentors of the twice born if not of the Śūdras also, developed into a more ambitious genre of publication. Jurisprudential questions were tackled extensively, and the topics of judicial procedure *(vyavahāra-mātṛikā)* and civil law *(vyavahāra-padas)* were explored in greater depth. Theoretical certainty, consistency, and universality (subject to recognised divergences of customs between 'Easterners,' 'Southerners,' etc.) eliminated obsolete or disfavoured stanzas, silently dropping what could no longer be used profitably[98]. This intellectual confidence, a would-be juridical imperialism, had another by-product. For matters subject to wild fluctuations in practice, and which could seldom be contentious except within sub-sects in the management of their shrines, found entry to the *śāstra*. By the fourteenth century it embraced everything which could claim admission on the basis of traditionality, provided it had an 'unseen' character. A *smṛti* rich in 'unseen' matters was actually provided with a *vyavahāra* section upon

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[94] Kane, HD, III, 826, 830–1; V, 1259, 1377.

[95] A. S. Nataraja Ayyar, Mīmāṃsā Jurisprudence (The Sources of Hindu Law) (Allahabad, 1952). Kane, HD, III, ch. 32; V, chh. 28–30. Maxims actually used by Aparārka are conveniently listed in an appendix to the edn. (Ānandāśrama Skt. Ser.).

[96] Kane, HD, III, 283, 832–4, 863–6, 443; V, 1273–4.

[97] Maskari strikingly relies on a Vedic passage when explaining Gautama VII, 25. On the inheritance of women TS. VI. 5, 8, 2 is constantly discussed. In the context of suttee ṚV. X. 18. 7 (Kane, HD, II, 634) (used, e.g. at Hemādri, Caturvarga-cintāmaṇi, Prāyaścitta-kāṇḍa, II, 1892, 45–9); and in the context of suicide ŚB. X. 2. 6, 7 figures (Medh. on Manu VI, 32; Kane, HD, II, 927; IV, 606). Above, n. 37. Vāj. S. XL. 3 (Īśāvāsyopaniṣad 3) is misunderstood in the *śāstra*: Kane, HD, IV, 606. L. da Cunha Gonçalves, Direito hindú e mahometano (Coimbra, 1924) persists in the practice of relying on Vedic propositions: Derrett, at ZVR, 74/1 (1973). P. V. Kane, Vedic Basis of Hindu Law (Dharwar, 1936).

[98] E. G. Baudh. II. 2. 50 (Dh. k. 1388).

the slenderest foundation by its commentator, Mādhava[99]. The ultimate result was an unmanageable mass of material, produced for enthusiasts, in books that took much effort to prepare, and which might figure in hardly more than two or three copies in any one of India's many kingdoms. The method of compilation was to place together uncritically all available passages from works of various ages and of various levels of authority (drawing hugely on the purāṇas), rather like the method of the elder Pliny, whose encyclopedic Natural History (A.D. 76) is known to have been compiled by exhaustive note-taking and a reproduction of the notes, arranged subjectwise, with a minimum of commentary.

Thus many topics became available to students of the *śāstra* which had not figured in the sūtras or the ancient smṛtis, and to this end texts were foisted on the wider public as the writings of renowned sages whose hypothetical original works had perished. The true age of some of these texts, which appear first in the fourteenth century, will never be settled; what gives them their authority (as Lingat rightly suggested[100]) is the fact that the digests incorporate them.

We are bound to notice the scope of these developments; what follows, tedious as it is, is by no means exhaustive. In these digests—and we may take as examples Hemādri's Caturvarga-cintāmaṇi, a work of the fourteenth century which extends to 6741 pages though, as we shall see, it is very incomplete, and Mitra-miśra's Vīramitrodaya (i.e. the digest of that name) a work of the seventeenth century of even greater bulk—appear such questions as follow:—
Gifts (i.e. gifts having an occult value)[101]: (i) definition of gift; (ii) elements of gift (i.e. time, subject-matter, etc.); (iii) its occult reward; (iv) classical types of gift and their ceremonial, e.g. *tulā-puruṣa*; (v) the relation of the type of gift to the season or date; (vi) gifts having endless rewards; (vii) minor gifts (e.g. flowers, lights, music, trees). Vows[102]: (i) definition of *dharma*, further definitions (a small encyclopedia of useful religious knowledge); (ii) praise of vows; (iii) general quality of vows and the right to perform them; (iv) individual vows and their methods; (v) vows appropriate to certain days, arranged according to the calendar up to the 14th day of the half-month (!); (vi) vows on special days, e.g. Śiva-rātri, the full moon, new moon, and other moments; (vii) vows to propitiate planets; (viii) vows appropriate to various months; (ix) and seasons; (x) year-long vows; (xi) miscellaneous vows (including suttee). *Śrāddha* (commemorative rites to propitiate the dead)[103]: (i) definitions of *śrāddhas*; (ii) rewards for *śrāddhas*; (iii) definition of 'ancestors,' and (iv) of of deities connected with the ceremony; (v) place and, (vi) time for celebration; (vii) qualifications of Brahmin guests; (viii) those not to be invited; (ix) material offerings to be used; (x) implements; (xi) invitations; (xii) preparations;

99 See below, p. 54.
100 The Classical Law of India, 132.
101 Hemādri, Caturvarga-cintāmaṇi, Dāna-khaṇḍa.
102 Ibid., Vrata-khaṇḍa.
103 Ibid., Pariśeṣa-khaṇḍa.

(xiii) sequels; (xiv) scattering rice; (xv) offering the rice balls *(piṇḍas)*; (xvi) *śrāddhas* at *tīrthas* (places of pilgrimage); (xvii) special *śrāddhas*, including *śrāddhas* offered to oneself. Time[104]: (i.e. the occasion for performances and its calculation), auspicious and inauspicious moments, astrological data, times for intercourse and for *saṃskāras*, and for religious acts including installing idols. Penance[105]: in general; particular penances for murder, liquor-drinking, theft, cow-slaughter, killing various animals, cutting down trees, teaching the Veda for a fee, forgetting one's Vedic text, insulting a teacher, being ignorant, selling forbidden objects, cultivating the soil, receiving forbidden objects, and so through innumerable individual sins catalogued separately, e.g. sale of a man, sale of oneself, sale of a son, sale of a wife, sale of mother, etc., sale of daughter, sale of various articles named in series (including selling a *śāstric* or *purāṇic* book, or selling one's own name), appropriating a hoard, or lands, jewels, and children, and many articles individually named; being a false witness, having intercourse with an outcaste woman *(cāṇḍālī)* or a Muslim *(turuṣkī)* and a huge range of sexual 'misdeeds;' telling lies, living in a wicked village, abandoning one's wife, seeing the menstrual blood of a unmarried daughter; eating forbidden foods or during fasts; working or eating in blue garments; marrying out of turn, accepting a dead man's bed, performing ritual services for bastards, abandoning one's virtuous wife without cause, and many other acts of bewildering variety and astonishing number; finally a description of the main categories of penance, the marrying (of defective persons) to a banana tree; and the importance of performing penances.

The Vīramitrodaya has a *rāja-nīti* section with vast citations from the purāṇas, amounting to 493 pages; the *vyavahāra-prakāśa* (relying principally on the *smṛtis*) has 568 pages; the definition section has 116 pages drawing on dictionaries, purāṇas, and works such as the Chāndogya-pariśiṣṭa, Gṛhya-pariśiṣṭa, and Maitrāyaṇīya-pariśiṣṭa and the Mahābhārata; the *saṃskāra-prakāśa* (including marriage) has 1026 pages; the section dealing with purity and purification has 244; with *śrāddha* 382; with *tīrtha* (missing from Hemādri) 610; the daily duties of the householder, including dietary rules and hospitality, occupy 565; that dealing with worship of deities 383; seasons and times 278; auspicious signs and qualities 660 (both these last use secular literature and astrological material extensively); and finally the *bhakti-prakāśa*, dealing with worship of Viṣṇu, has 175 pages.

6. *Law and religion. The need for exhortation and the role of memory*

Our last paragraphs emphasise that the greater part of the *śāstra* was not 'legal.' The section on *vyavahāra* appeared as a minor section and even at its greatest bulk was only a fraction of the literature. For any infraction of the *śāstra* the sanction of excommunication could be applied in any region where

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[104] Ibid.
[105] Ibid., Prāyaścitta-kaṇḍa.

zeal was adequate, and membership of one of the four *varṇas* was still valued. Until modern times excommunication for cow-slaughter was known, and penances for crossing the sea (and so living abroad) were inflicted as recently as the period of the First World War. Yet a great many topics were essentially voluntary, and a systematised superstition figured largely in them. Gifts and charities came (and continue to come) within the religious aspect of the *śāstra*, and law intervenes only when one asks how endowments shall be regulated[106]. European students of the *śāstra* early concluded that law and religion were inextricably connected in the Hindu mind[107]. More accurately, religion encapsulated, and enhanced the reality of, law in the minds of those subject to the *śāstra*; religious principles helped the jurists to make a cogent, coherent, and plausible corpus out of the many injunctions which the *śāstra* contains[108].

But it is incorrect to say that all injunctions were merely religious. Merit would, indeed, be earned by compliance, and demerit incurred by unauthorised deviation. The conscience could be satisfied if the elders of the community agreed with a particular *śāstric* viewpoint and accepted the individual's compliance with it. But in such cases the traditional text, fortified by the elders' approbation, drew its sanction (in their own minds) not from their assent, but from the supersensory quality we have already discussed. Vyavahāra, on the other hand, into which the greater part of practical law was inserted, was based upon injunctions the sanction behind which was reason and practical utility[109]. The *nīti-śāstra* and the *vyavahāra* portions of our *śāstra* were based upon observation and a comparison of practical alternatives, in which a conjecture of what would give the widest satisfaction played a role[110]. Whilst expecting *vyavahāra* (the juridical procedure) to be taken seriously by judicial assessors, the jurists brought it within their concern because the purposes of the Veda could not be carried out without secure tenure of property, or the consistent settlement of disputes *(vivādas)* which could not be prevented from going to court. All civilizations regulate the acquisition and protection of proprietary rights, wherever those may lie. The Veda could hardly function if Brahmins were not legitimately born, of verifiable descent, properly set up as householders: considerations which call for the chapters on marriage, initiation

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106 Ancient and modern branches of legal learning are combined in P. N. Saraswati, Hindu Law of Endowments (Calcutta, 1897); P. R. Ganapati Aiyar, The Law relating to Hindu and Mahomedan Religious Endowments (Madras, 1905). Āgamas are cited and considered in E. R. J. Swami v. State of Tamil Nad AIR 1972 S. C. 1586.

107 Sir H. S. Maine's error (under the influence of James Mill) persisted. Derrett, Juridical Review, 1959/1, 40–55. G. W. Keeton, Question (London), Jan. 1971, 78–86 (quoting S. S. Dhavan).

108 Derrett, RLSI, ch. 3.

109 Mahābhārata, XIII. 135, 137 (crit. edn.). Medh. on Manu II, 6 (text, 58; trans., 177); VIII, 72. Kane, HD, III, 874–5, 878–9; V, 1261–2.

110 Last note. Medh. on Manu IX, 213.

(upanayana), the status of *snātaka* (the accomplished student), and the daily duties of the householder *(gṛhastha)*[111].

Thus there was an ultimate religious reason why the details of law should fall within the *śāstrīs*' scope, even if the rules did not derive from the Veda. There was no religious sanction behind a breach of *niyamas* (regulatory rules, 'facultative rules') with which even the *vyavahāra* section is filled[112]. If the *śāstra* was basically exhortation, the *vyavahāra* rules were exhortation at one remove. Righteous kings would feel meritorious in applying the *śāstra*, unless valid customs derogated from them. This two-tier intellectual system continued in operation, with a succession of Brahmins qualified as teachers of all branches of personal and social regulation right through the Muslim periods down to the 1780's when the British put the status of Court Pandit on an official footing, and a system of training was inaugurated[113].

The epics, purāṇas, and other literature took for granted the supremacy of the great tradition, and no non-Hindu way of life was alluded to except in terms of contempt[114]. Deviations could be tolerated if consistent with the presuppositions of the *śāstra*, not otherwise. This gave an especial value to the textual tradition, the ultimate referee of orthodoxy. The notional scheme of the four *varṇas* proves that India valued a theoretical arrangement which justified the social institution of caste whilst not depicting any territorial caste-structure effectively[115]. Had the texts faithfully enshrined a local pheonomenon their authority would have been prejudiced. No one was alarmed when the jurists collectively forgot to which castes the texts referred[116]! The reality of caste has never been doubted, testified to most convincingly by those elements in the population which attempted to evade it by conversion to other religions.

It will readily be understood that conversion to Jinism or Buddhism did not alter the rules of law applicable in secular matters. Heterodox scriptures, and the men trained in them, were rejected as authorities by the *śāstra*[117]; but this did not mean that the converts had ceased to be governed by *śāstric* rules as a whole. A Jaina might not observe the law of *śrāddha*, but his contracts would come within the purview of the *vyavahāra* system. Jaina and Bauddha books found no footing in *śāstric* circles, and indeed their contribution to ancient Indian legal history remains to be worked out since Burma and Śrī Laṅkā between them provide no literary evidence of a distinct Bauddha jurispru-

[111] Derrett, RLSI, 119.

[112] Ibid., 78 n., 131–2, 174 n. 1, 186 and n. 2. For an example, Manu IX, 118 is a *niyama* acc. to Bhār. On the category see Kane, HD, V, 1229.

[113] Derrett, RLSI, 235–7.

[114] On *anācāra* see ibid., 103, 193. Kane, HD, I, 508 (Anācāra-nirṇaya, no particulars).

[115] The topic in inscriptions referred to below, n. 140. Also V. Raghavan, 'The Vaiśya-vaṃśa-sudhākara . . .,' Vol. Pres. to Sir D. Ross (Bombay, 1939), 234–40 (Kane, HD, III, 252 n.). See also next note.

[116] Animadversions by Derrett, JESHO, 7/1 (1964), 120 (Note).

[117] Manu II, 10–11; IV, 163; XII, 96; Yājñ. III, 242; Bṛh. I, 33. See above, n. 56.

dence[118]. Legal definitions to be found occasionally in ancient non-*dharmaśāstra* works in Sanskrit make no special contribution, and do not disturb the flow of *śāstric* tradition[119].

The *śāstra* is a gigantic complex of propositions, interlocking, cohering through the efforts of some hundred generations of scholars of various persuasions within Hinduism. As we have seen, whatever the actual origin of the rules, or the motive for retaining them, an occult value attached to the whole as a corpus. The first requisite for a *śāstrī* is a retentive memory. Reciters of epics and purāṇas had (as they have) magnificent memories and the composers of didactic works stretched to the limit the population's capacity to develop a copious memory. Vague apprehension would be fatal in this science. The pandit's mind, in which originality is not looked for, is the repository of the material which, with whatever interpretation or none, is to be handed on to the next generation. Teachers would rely upon their memory, and mnemonic devices would be welcome. A verse such as Manu VIII. 126 is designed with this in mind:

anubandhaṃ parijñāya deśa-kālau ca tattvataḥ /
sārāparādhau cālokya daṇḍaṃ daṇḍyeṣu pātayet //

'Having duly ascertained (i) the motive, (ii) time, (iii) place; and having considered (iv) the condition and (v) offence, he shall inflict punishment upon those deserving it'[120].

Thus tables of contents[121], anticipatory indexes to books, would be memorised; and books themselves would tend to be written in a memorable form, using either association of ideas (many clues have, alas, escaped modern students who are not brought up in the ancient culture) or the jingles of an easy verse structure. The verse form never ceased to attract. Śrīdharācārya (A.D. 1150–1200) wrote his Smṛtyarthasāra partly in verse; Kavikānta-sarasvatī, his contemporary, compiled his Viśvādarśa in verse (unfortunately his prose commentary remains unpublished)[122]; and nearer our own day the Vyavahāramālā, a Keralite production of the eighteenth century, has many quotations from smṛtis and also a great number of verses by the compiler, so as to be an entirely verse work.

In course of time compositions increased, texts of similar sound and meaning abounded, slips of memory occurred, and one author's text was attributed to

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[118] See n. 93 above. On the Niti Nighanduwa see H. W. Tambiah, Sinhala Laws and Customs (Colombo, 1968), 38–42.

[119] The appearance of *smṛti* material in Śabara's commentary on Jaimini (Kane, HD, V, 1277) has no effect on *smṛti*. Nor the eulogies of Vyavahāra/Daṇḍa in Mahābhārata and connected literature: P. K. Gode, Stud. in Ind. Lit. Hist. I (1953), 212–4; Derrett, BSOAS, 15/3 (1953), 598–602. Patañjali, Mahābhāṣya on Pāṇini II. 3, 50 (on property) has no effect on the *śāstra* (Derrett, ZVR 64 (1962), 34 n. 63). Yoga-sūtra, II. 30 defines theft, but in terms of *śāstra*.

[120] Other examples are at Manu VIII, 45, 49, 179.

[121] As at Manu I, 111–19; VIII, 3–7. See n. 77 above.

[122] J. Univ. Bombay 7 (1938), 66–98.

another. One line from a stanza of one author would be misremembered with a second line from another source, and both attributed to the traditional author of the first[123]. Further, as re-editions of old texts emerged, earlier versions circulated with them, and cross-contamination of texts occurred, as scribes compared manuscripts of various ages and provenances. Originally, no doubt, it was the spoken word that counted, the tone of voice, context, and drift of a series of verses eking out the meaning; and for this a written text would be a poor substitute. In the ancient world *silent* reading was very rare. These characteristics persist: even prose commentaries are more intelligible when read aloud. With the increasing bulk of works, the fallibility of memory, and the shortness of life, recourse to comprehensive written materials, intended to be a jurist's *vade mecum*, became desirable. Variant readings, even of the most casual origin, having proliferated and become noticed[124], the digest-compilers were compelled to become textual editors. Readings disappeared which the philologist and even the legal historian might have preferred. On the other hand the digest might retain a *smṛti* in an early form which had been eliminated from the surviving copies of the bare *smṛti*. Scribes would unconsciously 'correct' or spoil both, but the commentator's drift might corroborate an otherwise insecure or unsupported reading. From the seventh century at the latest books were the prime sources of study, and we find verses inserted or omitted from the basic texts at the editor-commentator's discretion[125]. Classes committed to memory what was recited to them from such vehicles. A self-conscious and sophisticated educational system was in operation[125a].

7. *Students, audiences, and the media chosen to instruct them*

(I) The primary material taught in *sūtra*, *smṛti*, or *purāṇa* form

Classical Indian education visualised a teacher teaching a small group of students of various degrees of ability, proficiency and seniority, face to face. A teacher of basic texts would seldom teach advanced theoretical work, but

[123] Derrett (cited n. 140 below), at 39, 54–5. *māhiṣyena karaṇyāṃ tu rathakāraḥ prajāyate / nāsyopanayanaṃ nejyā nādhānaṃ ca niṣidhyate //* This is Yājñ. I, 95ab with an untraced (low quality) addition.

[124] Viśvarūpa on Yājñ. I, 1, 2, 51; II, 119, etc. Medh. on Manu I, 16; III, 119; IV, 99, 185, 226, 229; VIII, 53. Caṇḍeśvara, Vivāda-ratnākara ad Yājñ. II, 258 (Dh. k.892; cf. Kṛtya-kalpa-taru, Vyavahāra-kaṇḍa, 436). Jagannātha (Colebrooke's Digest) V.ii. 102 (Madras edn., II, 268). Raghunandana, Śuddhi-tattva (Calcutta, 1908), 11.

[125] Viśvarūpa on Yājñ. I, 252; cf. Kane, HD, I², 424. Bhār. and Medh. on Manu IX, 93. See also commentators on Manu VIII, 182–3. Medh. incautiously incorporated a stanza (at Manu VIII. 51) from Bhāruci's commentary on the previous stanza! At Manu I, 105 Medh. has an additional verse.

[125a] The uses of a verse form in detailing legal rules were appreciated in modern times. Ṭekchand published an abridged metrical trans. of the Indian Penal Code (1860) (Meerut, 1895) (J. F. Blumhardt, Catalogue of the Library of the India Office II/2, London, 1900, 27). An English 'smṛti' is John Surrebutter (pseud.), Pleader's Guide (London, 1796).

he could combine the functions with different classes, as it were. The earliest method was to compress the teaching until it received the form of a pure mnemonic[126]. The words were a mere series of hooks upon which detailed teaching could be hung. It is interesting that the compilers of the Babylonian Talmud experienced the need to provide the same[127]. Students already had a good verbal knowledge of the Ṛgveda if not other Vedic *saṃhitās* also, and references to Vedic performances could be extremely brief[128]. Education in Vedic ritual was, as we have seen, the starting-point of this process historically, and the Brahminical monopoly of teaching was inevitable. The *śāstra* was a 'mystery,' a complex of professional secrets. No Śūdra would memorise such material, and his want of right to undergo *upanayana* was a permanent obstacle to his functioning within the *śāstra*, until very recent times. As a result purāṇas were compiled for cross-*varṇa* sects, so that even Śūdras might have 'scriptures' which they could learn.

The *sūtras*, the crisp prose aphorisms, then typified cryptic teaching, arranged so as to recall to the student, long after he had begun to earn as a scholar or ritual expert, what he had learnt in his teacher's school. Schools inevitably differed, sometimes openly[129]. Ideas which had not progressed beyond the ideal when they were propounded were prescribed as *dharma*. Different *sūtra*-authors could be compared; lesser teachers, noting discrepancies, reconciled them out of deference for all traditional texts. Anonymous *sūtras* acquired the names of ancient, perhaps fictional sages; these were either the ancestors of the Brahminical clans or teachers of a recension of the Veda. Such attributions did not prevent teachers from proposing to suppress, or to denigrate views incompatible with their own. But the ancient world's comparative indifference to consistency enabled contradictory *sūtras* to coexist for an immense period.

The most extended example of the *sūtra* form is not in our *śāstra* but in its sister science, *arthaśāstra* (the treatise passing under the name of Kauṭilya)[130]. Except as a device to concentrate teaching in the minimum space, thus maximising the importance of the teacher-pupil confrontation in the school, it has serious limitations. *Sūtras* are hardly suitable for students whose docility has waned with increasing maturity, for older pupils require reasons, and wish to learn their precepts in the round. A poetical statement attracts if it contains its own explanation, or, more characteristically, repetition, declamation, exaggeration, or some memorable maxim. A lapidary style suited students that wanted to possess a final solution. The form, then, characteristic of the so-called *dharmaśāstras* or *smṛtis* is of couplets[131], in which some rudimentary

[126] E.g. Āp. I. 1. 2, 2; ibid., 39; I. 1. 4, 19; 22; Gaut. I, 20; 58; V, 1; IX, 5.

[127] Bab. Tal., Ber. 57b (two examples).

[128] Manu's *itīti ca* (or *vā*) at XI, 252 is the ultimate in succinct allusion.

[129] Kāty. 823.

[130] See the relevant chapter in this volume.

[131] Usually the *śloka (anuṣṭubh)*, but other metres are found, e.g. at Bhāradvāja, Dh. k. 900. The Triṃśacchlokī (–1655) is in thirty *sragdharā* stanzas (Kane, HD, I, 292).

literary qualities remain, despite the subject-matter. The *smṛti* form dramatically presents the essence of many classes, sometimes as a lecture to a mythical audience, and even as a condensation of previous accounts successively boiled down[132]. Manu is the extreme example of the literary device whereby the whole of *dharma* is represented as Bhṛgu's version of Manu's revelation of what he learnt direct from the Self-existent himself.

When moral questions arise style adds something to matter: but when the topic is, e.g. road accidents, language is barely enhanced by the exigency of metre, even an accommodating one.

Some greater *smṛtis*, those of Manu, Yājñavalkya, and Nārada, survive entire. Bṛhaspati is in fragments, more or less confidently restored by an assemblage which has not disdained to place side by side contradictory verses attributed to the same author in digests. Kātyāyana is an important *smṛti* similarly rescued from dispersed fragments. The book attributed to the twin authors Śaṅkha-Likhita[132a] also has been partially reassembled by the pen of Kane. Śaṅkha is often quoted by himself. The Viṣṇu-dharma-sūtra or Viṣṇu smṛti is a *sūtra* produced at an age when that form was archaic but still respectable, and Viṣṇu is cited along with the *smṛtis* as a similar source of law, though its author or compiler only partially adopted the verse style. Between *sūtra*-form and *smṛti*-form on the one hand, Viṣṇu stands between the smṛtis and purāṇas on the other: Viṣṇu is encapsulated in an elaborate theatrical setting in which the god tells his spouse the essence of *dharma*, and she in turn gives details of the god's worship. In this one senses, as in Manu, the great difficulty such authors had to write *finis*.

The more evolved *smṛtis* worked upon earlier material (which may or may not be represented literally in our greater *smṛtis*), redeployed it, and restated it. Old words were often adjusted to new needs. Writers after centuries were bound to see the old sources in a more recent light, and this defeated, sometimes finally, a mere historian's hopes of reverting authoritatively to the original meaning of the earlier source.

We may not postpone further the question of chronology. Amongst the earlier prose commentaries some are securely dated, e.g. the Mitākṣarā. From allusions made by its author, and from internal evidence (e.g. the degree to which they require to explain the primary text, or call in aid other such texts, or refer to named or unnamed predecessors) previous prose commentaries can be relatively securely dated, within a century or so. The earliest of these cannot be older than about A.D. 600; therefore the *smṛtis* on which they rely, and which they explain, must be much earlier, not less than five centuries, since the language cannot have become obscure nor the intentions of the authors debatable, nor their texts so doubtful, in a shorter period[133]. A civilization which preserved the

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[132] Nārada: Kane, HD, I², 308–9. Bhaviṣya-purāṇa, ibid., 309–10.

[132a] Kane, HD, I², §. 12 (300 B. C.–100 A.D.). Fragments collected by Kane, ABORI, 7–8 (1926).

[133] The original reading of Manu IX, 225 is irrecoverable; X, 21 is hopelessly

Veda so perfectly will not have suffered tradition to be liquified so easily. Invasions did not ravage all India, and Kerala was exempt from cultural devastation in all periods. Later *smṛtis*, such as Kātyāyana or Nārada, not to speak of Hārīta or Uśanas may have appeared later than A.D. 100, with a lower limit of, say, 400; the principal ancient *smṛtis* will have been in existence by A.D. 100 and could have emerged centuries earlier, with the *sūtras*, on the whole, anterior to them.

Two movements widely evidenced in all levels of scholarship (except that of Lingat) must, with the greatest regret and respect, be rejected. The first is the temptation, to which all have succumbed[134], to suppose that texts containing more information are later, because more 'evolved'[135]; nor may we rank authors in order of precedence according as one quotes or appears to comment upon another. Even traditional complete *smṛtis* do not embrace all the material passing in commentaries and digests under their supposed authors' names. Verses attributed to one author in one text bear another attribution elsewhere. The ancient *smṛtis* cite each other. Lingat's sarcasms[136] are amply justified. 'Early' texts contain 'evolved' material and later texts contain simple unduly generalized propositions. Manu alone has the precepts on road accidents[137]; adoption (surely an ancient institution) figures more largely in 'later' texts[138]. The methods of escape from these dilemmas, such as assuming the currency of various versions or 'editions,' and imputing to 'interpolations' any incongruities with an overall theory of relative age, fail to convince. Nor can we work out to which periods of ancient Indian history the various *smṛtis*, or even the rules appearing in them, belong[139]. We have no evidence of the shape of the texts—all too fluid in themselves—before the prose commentators; our inscriptional evidence confirms the fluidity and incompleteness of scholarship even at so favourable a period for research as the eleventh and twelfth centuries[140].

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confused. Yājñ. II, 139 is in chaos. A variant reading of Manu XII, 83 is preserved by Bhār., of which no other trace is known. Two versions of a text may be cherished simultaneously, e g. Kāty. 857 *(caturthāṃśa / tṛtīyāṃśa)*. See Kane's Kāty., 301–2.

134 Mayer, Mazzarella, Sen-Gupta, Kane too (HD, I², 236, §. 6).

135 Bṛh. XII, 5 seems improved upon by Viṣṇu V, 60–64 (HLS, I, 395), but that tells us nothing about priority. Progress must have occurred regionally, chronologically, and in point of literary capacity; but the information is concealed from us. Kane, HD, IV, 190.

136 Op. cit., 127–8. B. Ghose, IHQ, 3 (1927), 607–11 (also at IHQ, 5, 1929, 367–75—a critical review of J. J. Meyer's Gesetzbuch und Purāṇa, Breslau, 1929), commented upon by Kane, HD, I, v: '. . . no certain chronological conclusion about individual authors can be drawn . . . from their views on certain points.'

137 VIII, 290–6. HLS, I, 410–1.

138 Vasiṣṭha, and the Kālikā-purāṇa (on which see Kane, HD, I, 448). Lingat, op. cit., 129.

139 Thus works such as S. K. Maity, Economic History of N. India in the Gupta Period (Calcutta, 1957) and V. R. Ramachandra Dikshitar, Gupta Polity (Madras, 1952) are based on unstable foundations.

140 Ins. A. R. No. 558 of 1904 (= South Indian Inscriptions 17, 1964, No. 603) and A. R. No. 479 of 1908 (both noted at R. Lingat, The Classical Law of India,

Small adjustments to up-date a traditional text to meet the needs of a local and temporary juncture could easily take place, sophisticating the total textual tradition. 'Interpolation' could be another word for a general process, akin to fermentation, signifying that the *śāstra* was alive. No statement, therefore, as to the relative age of the complete *smṛtis*, or their origin at any place or time can be based on more than guesswork. The speculative structure raised by Jayaswal[141] should serve as a warning. A timeless picture of the culture is possible, hardly more.

The scene changes when we reach the prose commentaries. The vital step of turning precept into an incipient rule of law has occurred. The jurists drew their inspiration from a timeless well of tradition. This critical assessment disagreeably affects scholars' work prior to Lingat, including Mazzarella, Ruben, and, frequently, Kane himself. But it is a small price to pay for a truer insight into the literature. Of significance is the development of *vyavahāra*, and its failure to be reabsorbed into *arthaśāstra*. A great many rules, especially in the area of debts, were projected upon a righteous basis, independent of what custom authorised without respect for *dharma*[142]. Even with this apparent handicap comparative work went on up to the time of the latest verse compositions[143]. Until the (original, not the modern) Bhaviṣya-purāṇa research, comparison, and reflection continued to refine the jurist's basic material. To place any text in time or place is thus futile.

A good picture of the courses that might have been followed by the *śāstra* is obtained if we compare, in outline, the contents of the earlier works. The Gautama-dharma-sūtra is generally agreed to be the oldest dharma-sūtra (600–400 B.C.). An independent work, not associated with other *sūtra* materials as are the sūtras of Āpastamba, Hiraṇyakeśin and Baudhāyana, it is composed entirely in prose. The charge of illogical or unsystematic arrangement (made

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1973, 273–4) studied by Derrett at Prof. K. A. Nilakanta Sastri 80th Birthday Felicitation Vol. (Madras, 1971), 32–55.

141 K. P. Jayaswal, Manu and Yājñavalkya, a Basic History of Hindu Law (Calcutta, 1930). See Kane, HD, I², 335, 340, 447.

142 Medh. on Manu VIII, 164; IX, 209. The remarriage of widows or (customarily) divorced women is almost totally ignored by the *śāstra* as incompatible with *śāstric* ideals of the permanency of marriage. The rules relating to 'righteous' interest, the methods of exacting payment of debts, and the liability of male issue to pay their ancestors' debts show traces of being idealistically structured. S. K. Jha, 'Usury in medieval India based in Vidyāpati's Likhanāvali [A.D. 1418],' JAS, 10 (1968), 46–8 (on Vidyāpati see B. Bhattacharya, ISPP, 8 (1966–7), 251–7). The Lekhapaddhati also (Derrett, RLSI, index, s.v.) evidences variations from the *śāstra* by agreement (ancient Babylonian law reveals a similar phenomenon). The topic of the *ātatāyin* (assassin: Dh. k. 597, 1650–5), a famous *śāstric* crux, is an example: L. Rocher, 'Vīramitrodaya on the right of private defence,' BDCRI, 12 (1954), 442–62.

143 The Smṛtisaṃgraha as quoted at Dh. k. 1142, 1157, 1194, 1384, 1529. Verse digests: Dāya-daśa-ślokī (below, n. 321) and the Triṃśacchlokī of Bopa-deva-bhaṭṭa on *aśauca*.

against the great Roman jurists up to the beginning of our era)[144] confirms the relative age of this compilation. Gautama cites no previous author but Manu (not necessarily our Manu-smṛti), an archaic characteristic. The order of topics, and the small role of *vyavahāra*, is instructive. The chapters may be summarised as follows: — (1) sources of *dharma*; *upanayana*; (2) rules for the uninitiated and for the student; (3) the four stages of life; (4) the householder; (5) intercourse, five daily sacrifices, hospitality; (6) respect, rules of precedence; (7) means of livelihood for a Brahmin; (8) the king and Brahmins learned in the Veda; the forty *saṃskāras* and eight spiritual qualities; (9) observances of the *snātaka* and householder; (10) the four *varṇas*; taxation; sources of ownership; (11) *dharma* of kings; administration of justice; (12) punishments for various crimes; (13) impurity; (15) *śrāddhas*; (16) Vedic study; (17) dietary laws; (18) duties of women; (19) penance; (20) abandoning a sinner; (21) sinners; (22) some specific penances for killing and adultery; (23) other penances; (24) secret penances; (25) alternative penances; (26) special penances; (27) Lunar penance; (28) partition of family property, women's property; kinds of sons; inheritance. We cannot tell whether the last section was added as an afterthought. Its concern with *vyavahāra* and its want of connection with what precedes suggests that it may have been.

Āpastamba's dharma-sūtra belongs to 450–350 according to Kane, who sees in it specific references to Jaimini's Mīmāṃsā-sūtra. It includes verses, which are quotations, being otherwise an aphoristic work. It is long, detailed, and critical in tone. A versified Āpastamba-smṛti existed, on daily rites, *śrāddhas* and penances, quoted in digests from the twelfth century. Portions found their way into a verse Āpastamba, a recent fabrication. The contents of the dharma-sūtra may be summarised as follows:—(I. 1) the sources of *dharma*; the *varṇas*; the teacher; *upanayana*; (2) the student; (3) his duties, continued in (4); (5) his penance and etiquette; (6), (7) serving the teacher and the final fee; (8) the *snātaka*; (9)–(12) Vedic study, and textual authority and usage, also the daily sacrifices, continued in (13); (14) deference; (15), (16) sipping water and dietary rules; (17) forbidden foods and untouchability; (18) accepting food from inferiors, forbidden foods (19); (20) rituals and forbidden trades, also in (21); (22) knowledge of the soul; (23) avoidance of faults leading to perdition; (24–29) penances for various crimes; tainted parents and their issue; (30), (31) *snātakas*; (32) ditto and their connubial intercourse and study and taboos. (II.1) habits of married people; (2) rebirth and some penances; (3), (4) ritual purity and sacrifices, hospitality; (5) the teacher and guests, and self-restraint; (6)–(8) hospitality; (9) stinting oneself; (10) begging and laws of humanity; the king must enforce penance; (11) privileges of Brahmins and marriage; (12) observances after marriage and reprobated marriage-arrangements; (13) sons, legitimate; and illegitimate; undharmic ways; sons cannot be alienated; bride-prices; (14) partition of property; (15) customs; (16)–(20) *śrāddhas*; (21) the four stages

[144] P. Stein, Regulae Iuris (Edinburgh, 1966), ch. 2.

of life; (22), (23) the *sannyāsin*; (24) immortality through offspring, etc.; (25), (26) the king and administration; adultery; (27), (28) various punishments; (29) degrees of criminality; trials; other dharmas are to be learnt from women and men of all castes.

This detailed but not exhaustive summary reveals the presence of legal material, more systematic than Gautama, more juridically aware, yet still confused. *Vyavahāra* is still not identified and separated for specialist treatment. The role of *vyavahāra* will be noticed when we look, in much less detail, at other sūtras and smṛtis. Āpastamba, anticipating our Manu, introduces, as is evident from II. 25, more than an aroma of *arthaśāstra*; *arthaśāstra* learning in systematic shape already existed.

Baudhāyana is attributed by Kane to 600–300: 'All these dates are more or less tentative and there is no finality about them . . .'[145]. Passages in Baudhāyana agree with others in Āpastamba and the relationship between the two is in doubt. Some would think the former more systematic than the latter. Praśna I deals with dharma, studenthood, the snātaka, purification, inheritance; sacrificial purity and instruments; castes; the king; the five great sins; punishments; witnesses; marriage; holidays. Praśna II deals with penances; partition; sons; exclusion from inheritance; adultery; means of subsistence in time of distress; duties of the householder; twilight prayers; bathing; the five daily sacrifices; eating; *śrāddhas*; sons' spiritual benefit; *sannyāsa*. Praśna III deals with self-denying householders; hermits; penances; texts; purificatory oblations; purification generally. Praśna IV includes further penances, muttered prayer, sacrifice in fire; uses of Vedic texts. This last portion may be an interpolation. The *vyavahāra* element is still very small, dwarfed by non-legal elements. Sin and impurity overshadow crime. The mixture of elements is shown by Baudh. II. 1. 2. 1–8: 'now offences causing loss of caste:—making voyages by sea, stealing the property of a Brahmin or a deposit, giving false evidence regarding land; trading with merchandise of any description; serving Śūdras; begetting a son on a Śūdra female, and becoming (thereby) her son.'

The king's assumption of the duty of keeping *varṇas* to their dharmas, a historic moment not known to recorded history, brought the law of *varṇas* and *āśramas* (including much of *ācāra*, e.g. marriage) into a potential separate category of *śāstric* study. Yet the marriage and succession chapters, so closely interdependent, never gained integrated treatment until the Anglo-Hindu law textbooks of the nineteenth century and early twentieth.

The dharmasūtra of Vasiṣṭha[146] is known for its passage on adoption; but it specialised in *vyavahāra* no more than did other sūtras. Kane attributes Va-

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[145] Kane, HD, I², 52–3.

[146] Ibid., §. 9. T. Dutta, 'Vasiṣṭha-dharma-sūtra-stha katipay durbodhya sūtrer pāṭh,' OH, 11/1 (1963), 33–46. A Vasiṣṭha-smṛti-vivṛti by one Kṛṣṇa-paṇḍita 'dharmādhikārī of Benares' was published from Benares in 1878. Bühler used it for his trans. of the *sūtra* in the SBE ser., if it is indeed the Vidvānmodinī, of which nothing else is known.

siṣṭha to between 300 and 100 B.C.[147]. He copied material from Baudhāyana and Āpastamba, or their sources. Vas. chh. 25–28 are in verse, and other chapters have some verses, some of which reappear in Manu, and some prose passages resembling Manu. Did Vasiṣṭha borrow from Manu? The reverse is possible, also both may have drawn from a common source. Kane finds Vasiṣṭha eclectic[148]; he has ancient as well as notably less ancient rules. *Vyavahāra* occupies a greater space. Of the thirty chapters, ch. 1 deals with the king and his rights and duties; 2 contains the famous 'righteous' rates of interest; 3 treasure trove and self-defence; 15 adoption; 16 the administration of justice, testimony, proof, and perjury; 17 sons, partition, *niyoga*, inheritance; 19 the king's duty to protect and punish; and subsequent chapters elaborate on penances. An editor of older sources still saw penance as the appropriate way of controlling many social and criminal offences. Juridical analysis is present, but it cannot leave the shadow of social control of a more comprehensive kind than the king can wield. It never did so entirely.

The smṛti of Manu[149] is the most famous of the lawbooks. Its unique quality is its combination of all the features beloved by Hindu society in a treatise on Duty. Bühler would have derived it from a hypothetical Mānava-dharma-sūtra[150], but this is without foundation. It is plain to the western eye that Manu ingested productions of centuries[151], and his present text was not composed in one piece, as the false climaxes show[152]. Despite awkwardnesses, its contradictions (due to attempting to satisfy dissimilar groups)[153], and its over-compressions and allusive attempts to embrace learning from the *arthaśāstra*[154], which it has adopted into the study of *dharma*, Manu remains the principal *dharma-śāstra* though no legal commentary accepts it as exhaustive or final. Its age, perhaps between 200 B.C. and A.D. 100, was not yet one of compulsive ency-

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147 Kane, HD, I², 105.

148 Ibid., 106, 109–10.

149 Kane, HD, I², §. 31 (pp. 306–49). K. Motwani, Manu: a Study in Hindu Social Theory (Madras, 1934); the same, Manu Dharma Śāstra (Madras, 1959). K. V. Rangaswami Aiyangar, Aspects of Social and Political System of Manusmṛti (Lucknow, 1949). V. Raghavan, 'The Manu Saṃhitā,' in The Cultural Heritage of India, 2nd edn. (Calcutta, 1959), 335–63; the same, 'Rājavidyā: Manu and the Bhagavadgītā' in T. M. P. Mahadevan Comm. Vol. (Madras, 1962), 340–6. M. D. Paradkar, Similes in Manu-smṛti, (Dehli, 1960). C. Tiwari, Śūdras in Manu (Delhi, 1963). R. M. Das, Women in Manu and his seven Commentators (Varanasi, 1962). R. S. Betai, 'State of criminal law in Manusmṛti,' JGJRI, 24 (1968), 279–98; the same, A Reconstruction of the Original Interpretations of the Manusmṛti (Ahmedabad, 1970). M. V. Patavardhana, Manusmṛti: the Ideal Democratic Republic of Manu (Delhi, 1968).

150 Kane, HD, I², §. 13.

151 Manu VIII, 42 seems to be borrowed from another context.

152 Manu XII, 107, 117. In the traditional view, however, Manu was originally composed (as it now stands) in one piece. But even Kane saw an insertion at one place: HD, V, 1265–6.

153 See below, p. 33. Kane would doubt such an interpretation: HD, I², 343.

154 See below, n. 159.

clopedism, such as is reflected in the purāṇas, to the fascination of which medieval digest writers succumbed. Manu refused to include much tempting information which must have lain to hand, but which he was content to incorporate by mere allusion. His smṛti was a text written by a man who knew how commentaries would be composed, and relied not only on oral exposition of his own work, but even a succession of written commentaries, in which he would not have been disappointed[155].

Manu does not enlarge the scope of the *śāstra* except in the sections where *arthaśāstra* was utilised, and in *vyavahāra*, where the topics have become discrete, expounded serially, in an intelligible sequence. Moral offences are not yet sufficiently extrapolated from ritual offences[156], a point often made against the Jewish law which is virtually contemporary. One wonders whether his society feared these, to us, distinct classes of wrongdoing more nearly equally than modern man will.

Book 1 opens the mythical encapsulation, the Creation, told in two stories (like Genesis); the universe and transmigration are thus harnessed to the story of *dharma* which is to unfold. Bhṛgu tells a third story of creation, this time cyclic. Incongruous elements are not visualised as incompatible. Differing notions are equally true. The Four Ages of the universe reveal the diminution of humans' capacity to fulfil *dharma*[157]. Another myth explains the origin of the four *varṇas*; the preeminence of the Brahmin order being asserted (for the first of many times). This book ends with a summary of the rest of the work, and the promise of system is not belied.

Book 2 concerns the student, appropriately prefacing a promise of endless bliss to one who studies the *śāstra*. Its sources are the Veda, the *smṛti*, the example of those that know it, and the customs of the good. Book 3 is devoted to the householder, marriage, and *śrāddhas*. A poetic and dramatic style sets off the information[158]. Book 4 describes the householder's means of livelihood; miscellaneous rules of daily life; Vedic study; the moral framework of life; the avoidance of sin; preparation for the hermit's stage of life. Book 5 deals with forbidden food; ritual impurity and mourning; purification of people and things; the duties of women. Book 6 introduces the hermit and the ascetic, and ways in which the Supreme Brahma may be attained; the search to escape transmigration; the householder's responsibilities and privilege in the search for 'liberation.' Book 7 concentrates on the king and his liability to be corrupted. The *arthaśāstra* contributes heavily to this book[159]. Taxation, peace and war, and

[155] Kane, HD, I², 346–8.

[156] J. M. Macfie, The Laws of Manu (Madras, 1921), 14–15 (unsympathetic).

[157] The interpretation of R. Lingat, JA, 249 (1961), 487–95 (= Cont. Ind. Sociol. 6 (1962), 7–16). On the kali-varjyas see Derrett, RLSI, 88–9. B. Bhattacharya, The Kalivarjyas (Calcutta, 1943). Kane, HD, III, 927–68. Also ibid., V, 1270, 1629–70.

[158] Manu III, 224–5 explains the need to offer food (in a vessel) with both hands; III, 266–72 explains the satisfaction of the manes from various (including meat) dishes: poetic expression of banal practices, intrinsically irrational.

[159] D. Schlingloff, WZKSO, 9 (1965) 1–38; Derrett, ZDMG, 115 (1965), 134. T. R.

the king's daily routine end a tightly-packed little treatise. Book 8 deals with judicial administration, procedure, the topics of litigation, some of which resemble criminal prosecutions; miscellaneous social rules figure; some classes are exempt from taxes; washermen are enjoined to wash clothes gently; the king should fix tolls at ferries. Book 9 deals with husband and wife, including *niyoga* (levirate); discipline to be administered to a wife; marriage engagements. In this book Manu recognises the practice of taking bride-prices amongst Śūdras, which he condemned in Book 3. The idealistic and normative character of the *śāstra* is revealed here as in its treatment of niyoga[160]. Next comes inheritance, and partition of estates, with alternative rules showing that Manu approved different practices, perhaps from different regions. Gambling and betting, the mortal sins, some miscellaneous rules authorising the king to act against rogues, an encomium of the king and advice to show deference to Brahmins, complete the Book. Book 10 tediously informs us about the mixture of *varṇas*, allotting occupations to the mixed castes. It ends with the dharma of a Śūdra, whose duty it is to serve Brahmins. Book 11 is devoted to penances, which have appeared very briefly before, but begins anomalously with religious gifts and the duty of a king to see that a Brahmin's wants are supplied. There is much unresolved conflict between the various forms and prescriptions of penances for various sins—the notions of various communities evidently find expression here. Book 12 deals, less satisfactorily than any other Book, with sins, the philosophic identification of the individual soul and the fruit of sins, judgment, rebirth, and related matters, such as the three qualities *(guṇas)* of existence, action and abstention from action, the authority of the Veda, the belief that the Self pervades everything—this brings Bhṛgu to a mythical evocation of Brahma, so that the encapsulation within a mythical and religious framework is rounded off.

The name of Manu has nothing to do with his fame[161]. The compiler's achievement has brought lustre to the name. System, enthusiasm, an overarching concept of the world and of man and duty are found, and the meeting of poetic and dramatic gifts with a sense of definite statement. Compromise, accumulation of material, all with restraint, urge upon any student of the *śāstra* the advantages of attempting to comprehend this work.

In the Yājñavalkya-smṛti, with only 1010 verses (1003 in Viśvarūpa's text, 1006 in Aparārka's) in comparison with Manu's 2700, we find a greater compression. Manu II, 243, 247, 248 are compressed into Yājñ. I. 19; Manu III, 46–48,

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Trautmann, Kauṭilya and the Arthaśāstra (Leiden, 1971), ch. 6 (see T. Burrow, JRAS, 1971/2, 199). The deformation of Kauṭilya undergone in Bhāruci's comm. is similar to that of the explicit quotation of K. by Nārāyaṇa, Vyavahāra-śiromaṇi (Ms.: Kane, HD, I, 293 n. 648b; apograph at S.O.A.S., London, 42), which Chintamani corrected at AOR, 4/2 (1939–40), Skt. 29, cf. n. 5 (see n. 322 below).

160 P. Mukherjee at OH, 11/1 (1963), 1–14 (also the same at OH, 9/1, 1961, 47–59). Interest in *niyoga* revived in modern times: Macfie (n. 156 above), 93–5.

161 About 'Manu(s)' see Kane, HD, I^2, 306–10.

50 figure as Yājñ. I, 79, and Manu IV, 84–5 as Yājñ. I, 141[162]. It is clear that Yājñavalkya knew Manu and tried to improve on him. The mythical framework is reduced to nothing as the sages approach Yājñavalkya in Mithilā and ask him to impart *varṇāśrama-dharma* to them[163]; but the insistence on supernatural authority, the religious goal behind all *dharma* is not abated[164]. Book 1 deals with *ācāra*, the ritual aspects of life, including the duties of the *varṇas* and *āśramas* and in particular marriage with the minimum information necessary to avoid incest and imprudent matches. Book 2 deals with *vyavahāra*, the eighteen 'titles' of law. The book is capable of standing alone. Book 3 deals with penances. Its concision enabled it to rival Manu. Less effort of memorisation would serve the student; to that end a crudity of sound and oddity of vocabulary might be rather advantageous than the reverse[165]. Smooth stanzas are more readily confused and make a lesser claim on the memory. Yājñavalkya has many commentators, though less than Manu[166]. His conciseness gave rise to serious differences of opinion as to his meaning, and the divergences between the jurists attributing their theories to his text leave us with the suspicion that 'Yājñavalkya' relied too heavily on an oral gloss in his own school,which achieved less durability than he had expected. There is no connection between our Yājñavalkya and the Yogi Yājñavalkya who composed a work of that name or the Bṛhad-yogi-yājñavalkya, which is not a *dharmaśāstra*, but a yoga work.[167] The date of our text is placed by Kane between A.D. 1 and 200 'or even a little earlier'[168]. The Agni-purāṇa (placed by Kane about A.D. 900) copies Yājñavalkya extensively (chh. 253–8 take 280 verses from Book 2 of Yājñ., and most of the rest come from Nārada), and thus we can reconstruct the text of Yājñ. as it was about 800–1100 from the variant readings in Viśvarūpa, the Agni-purāṇa, and Vijñāneśvara's Mitākṣarā. Material to the same end is available from the Garuḍa-purāṇa also, chh. 93–106 of which draw confessedly upon Yājñavalkya, with many verses summarising or paraphrasing him. Both purāṇas testify to a text which agrees in part with Viśvarūpa's, in part with the Mitākṣarā, and in part remains independent of both[169]. This resembles the pattern which has been discovered in the Manu-smṛti[170]. Both the major smṛtis, equally attractive to

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162 Kane, HD, I², 430–1. On Yājñ. and the Arthaśāstra see R. C. Hazra, OH, 12/2 (1964), 19–34 and G. Harihara Sastri, 'Arthaśāstra Vyākhyā,' lxii–lxiii (JOR, 37, 1967–8). H. Losch, Die Yājñavalkyasmṛti (Leipzig, 1927).

163 Yājñ. I, 1–2.

164 Yājñ. III, 65–194 exemplify this.

165 Yājñ. III, 96–9 illustrate this.

166 Viśvarūpa, Aparārka, Vijñāneśvara, Śūlapāṇi—four to Manu's nine medieval commentators (cf. edition of J. Dave, commenced in 1972). Raghunandana cites Devabodha as a commentator on Yājñ., but he is otherwise lost (Kane, HD, I, 703).

167 Kane, HD, I², 449–57. B. Bhattacharya, Studies in Dharmaśāstra (Indian Studies, Calcutta, 1964), 11–13.

168 Kane, HD, I², 443, 447.

169 Ibid., 424–9.

170 The text as read by Bhār. and Medh. may be compared with other readings obtained from digests (G. Jha, Manu Smṛti, Notes I, Calcutta, 1924). F. László.

teachers at all levels of instruction, had unsettled texts by about A.D. 800, testimony less to uncertainty of transmission than to their working character. The treatment of Yājñavalkya by his two older commentators and by Aparārka on the one hand, and by the compilers of those two purāṇas on the other affords opportunity for a close examination of the techniques of *smṛti*-composition.

Bṛhaspati, Kātyāyana, and Nārada are earlier than A.D. 600, but though they must be located *somewhere* in Indian history no evidence, internal or external, sufficiently connects them with an era. The great detail of the smṛtis might suggest that they not only portray an era exhaustively, but ought to indicate which it is, but this is illusory. Bṛhaspati[171] seems to have been the first jurist to reveal his methods, and it is no accident that the *vyavahāra* portions outweigh the rest. All but a tiny fraction (of what authenticity ?) is in the *śloka* metre. True, we have only what commentators and digest writers garnered, and we have some verses repeating a point in different words, and even contradictions[172]: but what survives may fairly exemplify what used to exist in connected form. In Aiyangar's edition the *vyavahāra* section occupies 29 paragraphs and 228 pages, the *saṃskāra* section 77 pages and 560 verses; the *ācāra* 101 verses (the division between *saṃskāra* and *ācāra* is Aiyangar's), the *śrāddha* 155 verses, the *āśauca* (impurity) 78, the *āpad-dharma* (*dharma* for times of distress) 53, and the penance section 90 verses. Nor is *vyavahāra* prominent only in bulk. Bṛhaspati covers in detail aspects ignored or slightly handled by Manu and Yājñavalkya. On procedure he wrote what amounted to a little treatise. On the drafting of documents he brought deep study to bear, and in all fields he shows a critical mind, with no fear of contradicting his predecessors (holding Manu, however, in great respect)[173]. It is more interesting that he reinterprets ancient formulae and maxims, giving them a new slant[174]. Commentators find it desirable to adduce Bṛhaspati frequently. Kane draws attention to his independence.[175] In the verse *dyūtaṃ niṣiddham* Bṛhaspati says 'Manu forbade gambling as it destroys truth, purity, and wealth; but others allowed it, provided a share was given (in the profits) to the king'[176]. In the verse *śastrādibhiḥ* he says 'If a man kills a cow with a weapon, etc., he should perform the penance laid down by Manu, but if he kills a cow by forcibly restraining it, then he should perform

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Die Parallelversion der Manusmṛti im Bhaviṣya-purāṇa (Abh. K. M. 40, 2: Wiesbaden, 1971).

171 Kane, HD, I², §. 37. K. V. R. Aiyangar's reconstruction of Bṛh.: Kane, HD, I², 491 and critical comments by L. Renou, IIJ, 6 (1962), 81–102; Études Véd. et Pāṇ. XI (Paris, 1963) (supplementing Jolly's trans.).

172 Bṛh. XXI, 7 (on affrays) seems to be contradictory of XXI, 5, and XXI, 13 is out of tune with the latter. Bṛh. (Aiy.) XXVI, 97 (on the widow's right to land) is hard to reconcile from XXVI, 99–100 (which seems to deny it).

173 Kane, HD, I², 328, 486–7.

174 See below, n. 279–80. Even Manu incorporated ancient maxims: IX, 3.

175 Kane, HD, I², 329.

176 Bṛh. (Aiy.), XXVII, 1.

the penance laid down by Aṅgiras or Āpastamba'[177]. He seems to criticize Manu at IX, 219 in the verse *vastrādayaḥ*: 'those who declared clothes and other things to be impartible have not considered the position that the wealth of the rich may consist of clothes and ornaments.'

Kātyāyana wrote in verse on *vyavahāra* alone. The collection of scattered verses made by Kane as far back as 1933[178] extends to 973 verses. It is not likely that the writer on *śrāddha* and other non-*vyavahāra* topics in prose, or prose and verse, bearing the name Kātyāyana, was the author of the *vyavahāra* work[179]. Bṛhaspati will fascinate the jurist as an interpreter in verse, anticipating the commentators who interpret in prose, but Kātyāyana, along with Nārada (whose work survives in two recensions)[179a], will be the primary source most nearly agreeable to the comparative legal historian, for his abundant information. Nārada is the author to give detailed information on impotence[180]; Kātyāyana summarises effectively the complex law on the property of females[181]. Less concerned to debate previous views, Kātyāyana and Nārada in different ways illustrate the art of crystallising legal propositions in memorable and crisp diction. It is their results alone that we are given, seldom or never their reasoning, nor the history of the ideas, a tradition which adhered from the *sūtra* period onwards[182]. Nārada is rich on the king's powers and duties[183], and Kātyāyana explains the status of custom, and the necessity to harmonise that intractable source of law with *śāstric* jurisprudence[184]. A topic figuring in Bṛhaspati[185] also, it had evidently deserved particular attention between the time of Yājñavalkya and A.D. 600. Had the *śāstra* rejected all custom as unauthoritative it would have lost the day, but its subtle and ambiguous tolerance of custom and dependence from it, enabled it to conquer by the attraction which *dharmic* living had for social groups whose customs had little in common with the ancient Aryans of the Ganges Valley. In the end an apocryphal smṛti says that ancestral customs are more important than any rule in all the *śāstras*[186].

[177] Bṛh. (Aiy.), II, vi. 38gh–39ab, referring to Manu XI, 108–15, Aṅgiras 27 in Jīvānanda's edn., I, 556; Āp. I. 9. 26, 1.

[178] Kātyāyana-smṛti-sāroddhāra (Bombay, 1933). Kane had not seen the Vyavahāra-nirṇaya nor most of the Kṛtyakalpataru. K. V. R. Aiyangar, in S. M. Katre, ed., Vol. Pres. to P. V. Kane (Poona, 1941), 7–17. S. C. Banerji's critique is repelled by Kane at HD, I², 84–9 (on Banerji himself, ibid., 290). On Aiyangar, HD, I², 505–6.

[179] Kane, HD, I², 502.

[179a] Ibid., §. 36. T. R. Chintamani, in C. K. Raja Pres. Vol. (Adyar, 1946), 154–96. Nārāyaṇcandra Smṛtitīrtha, ed., Nārada-smṛti (Beng. trans. and comm.) (Calcutta Skt. Coll. Res. Ser. 38: Calcutta, 1966).

[180] N. 74 above.

[181] Kāty. 894–816.

[182] Examples: Āp. I. 3. 11, 1; I. 11. 31, 16. At I. 11. 32, 25 one cannot tell whether prudence or superstition backs the precept.

[183] Nār. XVIII.

[184] Kāty. 37–51, 225, 884A.

[185] II. 26–31.

[186] Sumantu quoted by the Smṛticandrikā, Saṃskāra-kāṇḍa, 9.

The law can be seen progressing upon two paths. Bṛhaspati as a jurist is matched by the purāṇic writer who showed juridical reflection in the old Bhaviṣya-purāṇa[187]. Kātyāyana and Nārada, traditionalists, fix the law in lapidary phrases. But for the Viṣṇu-smṛti we should wonder at the reappearance of juridical material in the purāṇas. None of the techniques exemplified by Bṛhaspati, Kātyāyana, or Nārada (as we possess them) concerns itself with mythical aspects of *dharma*. The sanctity of the *śāstra* and the utility of *vyavahāra* in particular are unquestioned. Confident that the presuppositions of the śāstra will not be debated, Kātyāyana and Nārada seem to adopt a 'secular' tone. The Viṣṇu-smṛti[188], which is a puzzle, stands between the thought-world of Manu and that of the Vaiṣṇava purāṇas. The smṛti is encapsulated in a heavy sheath of myth[189], the worship of Viṣṇu occupying a substantial place[190]. This smṛti is a bridge between the philosophical Hinduism of Manu (reminiscent of the Bhagavad-gītā) and the epics on the one hand, and the sectarian purāṇas on the other. Yet the law stated in it is traditional. A late commentator utilised this text, and hung upon it some peculiar views of his own[191]. Transitional in psychological approach, the smṛti is transitional in style: without apparent reason passages change from prose to verse—yet we note that the more obviously legal parts retain *sūtra* form, as if to shelter under the style hallowed by Gautama, and others who were only gradually leaving the *sūtra* form, such as Śaṅkha-Likhita and Hārīta (see below). Transitional in yet another respect, the Viṣṇu-smṛti is overwhelmingly concerned with the ritual aspects of Hindu life. Much of the law of crime figures as if it were still a department of sin-and-penance (Viṣṇu XXXIV, 1–2 reads: 'Sexual connection with one's mother, daughter, or daughter-in-law are crimes in the highest degree. Such criminals in the highest degree should proceed into the flames; for there is not any other way to atone for their crime.' XXXIX, 1–2: 'Killing domestic or wild animals are crimes degrading to a mixed caste. He who has committed a crime degrading to a mixed caste shall eat barley gruel for a month, or perform the penance called Kṛcchrātikṛcchra.'). The work has an archaic flavour. Yet its commencement is devoted to *vyavahāra*. The duties of the king commence at III, and the very detailed law of inheritance ends the section at XVIII. On some topics of

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187 Cited in the Paribhāṣā-prakāśa of the Vīramitrodaya, 17, 19, 28, 42–3, 55, 63, 65, 70, 113. It is not cited by Aparārka in a *vyavahāra* context, except for the quotation appearing also at the Paribhāṣā-prakāśa, 19 (Aparārka, 626), but it is abundantly cited under *ācāra* and *prāyaścitta*.

188 Kane, HD, I², §. 10. J. Jolly, 'Das Dharmasūtra des Vishṇu und das Kāṭhakagṛihyasūtra,' Abh. d. Kön. Bay. Akad. d. Wiss., Philos.-philol. Cl., 2/1 (1879), 22–82. The same, Institutes of Vishnu (Oxford, 1880), Introd. (the sūtra was 'the ancient dharma-sūtra of the Cārāyaṇīya-Kāṭhaka śākhā of the Black Yajurveda'). L. Renou, JA, 1961, 163–72; BDCRI, 20 (S. K. De Fel. Vol.), 1960, 319–23.

189 Renou, last note.

190 Viṣṇu XCVIII–XCIX (Pṛthvī and Lakṣmī).

191 For the Vaijayantī, see below, n. 324.

vyavahāra Viṣṇu is more often cited in digests than are other sūtras! It is a slight indication of the balance that in the edition with the commentary *vyavahāra* occupies 325 out of 897 pages. And the commentary is about equally full throughout. Kane assigns the Viṣṇu-smṛti to two stages, a nucleus mostly in prose between 300 and 100 B.C., and an inflated text, with its large verse elements, of about A.D. 400–600[192]. Renou's close study of Viṣṇu neither confirmed nor rejected this. It remains possible that the author took his starting point in material of greater age, which may not have had the name Viṣṇu attached to it. The prominence of *vyavahāra* even in the prose passages strongly suggests an author faithful to the sūtra tradition, drawn towards the outlook of the age of the great fragmentary smṛtis.

Many sūtra writers have been preserved only in fragments. Their names recur constantly. It is curious how often incomplete or lost sūtras, and smṛtis, contain information which commentators regard as significant, even vital[193]. Amongst the lost sūtras are Atri[194], Uśanas[195], Kaṇva[196], Kāṇva[197], Kaśyapa[198], Kāśyapa[199], Gargya[200], Cyavana[201], Jātukarṇya[202], Devala[203], Paiṭhīnasi[204], Budha[205], Bṛhaspati (sūtra)[206], Bharadvāja (or Bhāradvāja)[207], Śātātapa[208], Sumantu[209], and Hārīta[209a].

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[192] Kane, HD, I², 125, cf. 126 (line 2).

[193] Laugākṣi's definition of *yoga-kṣema* is found essential (Kane, HD, I², 528, refs.). Marīci is essential to Aparārka (Yājñ. II, 168, p. 775) on apportionment of loss. Śaṅkha is relied upon by Vijñāneśvara (Mitākṣarā, Colebrooke, I. ii, 7; iv, 3). Uśanas is cited ibid. I. iv, 26. Jīmūtavāhana relies (Dāyabhāga, Colebrooke, III. ii, 25) on Hārīta, Uśanas and Paiṭhīnasī (the last again at XI. ii, 15). Gautama (untraceable) is the basis of the Mitākṣarā doctrine of sons' birthright (I. i. 23)! Pulastya gives the rites for one bitten by a dog (Aparārka, 1136) fuller than the equally fragmentary Śaṅkha, Hārīta, Devala, and Paiṭhīnasī.

[194] Kane, HD, I², §. 16. Fragments collected: Banerji, DS, 244.

[195] Ibid., §. 17. Banerji DS, 340–4.

[196] Kane, §. 18.

[197] Ibid.

[198] Kane, HD, I², §. 19.

[199] Ibid. Banerji, DS, 291–5.

[200] Kane, HD, I², §. 20.

[201] Kane, HD, I², §. 21. Banerji, DS, 245–7.

[202] Ibid., §. 22. Banerji, DS, 290–1.

[203] Ibid., §. 23. B. Bhattacharya, Studies in Dharmaśāstra (Calcutta, 1964), 8–10. Banerji, DS, 247–57.

[204] Kane, HD, I², §. 24. Fragments gathered: T. R. Chintamani, AOR, 4/1 (1939–40) (Skt.), 1–40. Banerji, DS, 299–319.

[205] Kane, HD, I², §. 25.

[206] Ibid., §. 26.

[207] Ibid., §. 27. Banerji, DS, 244.

[208] Kane, §. 28. Banerji, DS, 325–8.

[209] Ibid., §. 29. Fragments gathered: T. R. Chintamani, JOR, 8 (1934), 74–88. Banerji, DS, 329–40.

[209a] Banerji, DS, 257–89. See n. 229 below.

There is a sharp difference of opinion as to the age of the Vaikhānasa-dharma-sūtra[210], which some would place as old as, or even older than Manu. Its Vaiṣṇava tendency could most easily be relied upon to place it much later (not later than, say, A.D. 900), which will make its style archaistic.

There seem to have been, once, a vast number of smṛtis available[211]. The number of lost smṛtis whose texts are available in quotations in commentaries and digests is very large: Aṅgiras[212] (whose text exists in several forms in manuscript and must be regarded as virtually fragmentary), Ṛṣyaśṛṅga[213], Kārṣṇājini[214], Caturviṃśati-mata (in manuscript though portions on *saṃskāra* and *śrāddha* have been published)[215], Pitāmaha (Kane assigns him to the fourth to seventh centuries)[216], Pulastya[217], Paiṭhīnasi[218], Pracetas[219], Prajāpati[220], Marīci (who seems to have written in prose also)[221], Yama (many versions are available in print and in manuscript, in some confusion)[222], Laugākṣi (verse and prose)[223], Viśvāmitra[224], Vyāsa (whose smṛti dealt with vyavahāra)[225], Ṣaṭ-triṃśan-mata (Kane assigns him to 700–900)[226], Saṃgraha or Smṛti-saṃgraha (8th to 10th cent.)[227], Saṃvarta[228], and Hārīta[229]. The Parāśara-smṛti (which seems at times to borrow from Manu) is an ancient smṛti (Kane places it between 100 and 400)[230], not to be confused with the supposititious smṛtis which arose during the period of the commentators, in some cases perhaps as late

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210 Otherwise *-dharma-praśna* (ed. T. Gaṇapati Śāstri, Triv. Skt. Ser., 1913; ed., 1927, and trans., 1929, by W. Caland, Bibl. Ind. Ser.). Kane, HD, I², §. 15.

211 The long list at Yājñ. I, 4–5 is well known. See also Sarasvatī-vilāsa, 13, also Prayoga-pārijāta quoted by Mitra-miśra, Vīramitrodaya, Paribhāṣā-prakāśa, 18. See n. 215 below.

212 Kane, HD, I², §. 39. Reconstructed, ALB, suppl. to 15–17 (1951–3).

213 Kane, HD, I², §. 40.

214 Ibid., §. 41.

215 Benares Skt. Ser., 137–9. Summarizing the teaching of twenty-four sages: Kane, HD, I², §. 42.

216 Kane, ibid., §. 44. C. Scriba, Die Fragmenta des Pitāmaha (Leipzig, 1902); V. Manzini, 'La procedura ordalica . . .,' Atti del Reale Ist. Veneto di Sc. Lett. ed Arti, 63/2 (1903–4), 333–58.

217 Kane, HD, I², §. 45. See n. 237a below.

218 Kane, ibid., §. 46.

219 Ibid., §. 47.

220 Ibid., §. 48.

221 Ibid., §. 49.

222 Ibid., §. 50.

223 Ibid., §. 51.

224 Ibid., §. 52.

225 Ibid., §. 53. Ed. Batakrishna Ghosh, IC, 14 (1942–3), 65–98. 'Vyāsa' often represents a commentator's reference to the Mahābhārata.

226 Kane, HD, I, 239; I², §. 54.

227 Ibid., §. 55.

228 Ibid., §. 56.

229 Ibid., §. 57. J. Jolly, Abh. d. Kön. Bay. Akad. d. Wiss., Philos.-philol. Cl. 18 (1890), pt. 2, 505–24.

230 Kane, HD, I², §. 35.

as the sixteenth or seventeenth centuries. Dakṣa too is an ancient smṛti, in print in Jīvānanda's collection[231].

Śaunaka, about whom nothing is known, is the author of a text containing the famous propositions on adoption to which the jurists gave full, and unfortunate, attention[232]. From the ninth century on, irrespective of the development of purāṇic material, a new wave of smṛti writing occurred. The names given to the works, often prefixed (as were some older works) with Vṛddha-,[232a] Laghu-, and so on, are chosen from the list of known authors of genuine smṛtis. The two printed collections reveal, what the paucity of citation in digests confirms, that the compilers were keen, not to digest existing smṛti material but to produce rival works which might displace ancient smṛtis, containing commonplace moral, ritual, and mythical material and (a tell-tale feature) no contribution to the topic of *vyavahāra*. The wave of 'bogus' smṛti writing, which may have extended into the seventeenth century, was not juridical in inspiration. The fragmentary smṛtis, on the other hand, are often turned to for new information.

Vyāsa quoted in the Vivāda-tāṇḍava[233] gives us not only the widow's right of inheritance, but also detailed rules as to her religious and charitable duties, worship of Viṣṇu, etc. The expansion was clearly a desideratum. Vṛddha-Śātātapa (an utterly obscure author) sets out the different classes of *bandhus*, a proposition quoted extensively from the Mitākṣarā onwards[234]. Vṛddha-Manu gives valuable information on compensation[235]. Yama informs us about the forfeiture of an excommunicate's goods, retaining an option which major sources reject[236]. Quotations from Viṣṇu in the Sarasvatī-vilāsa, which cannot be found in our printed Viṣṇu, give unique information about a special tenure of land[237]. Vijñāneśvara finds Pulastya an essential text to qualify Yājñavalkya[237a].

The role of these unverifiable texts of various ages cannot be overestimated, and the same must be said of purāṇic sources. Anonymous texts, referred to simply as 'smṛti' may contain valuable supplements to the law[238]. Texts appear-

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231 II, 383–402. Kane, HD, I², §. 43.

232 Kane gives no particulars of Śaunaka. For the adoption problem, Kane, HD, III, 664–84; for the text, ibid., 1011 and Dh. k. 1363–71.

232a Kane, HD, I², 111.

233 Dh. k. 1524.

234 Dh. k. 1528.

235 HLS, I, 292, 294, 296–7; Dh. k. I/2, lxxvii; I/3, 32.

236 Vivāda-ratnākara, 638, Vyavahāra-nirṇaya, 532: *patitasya dhanaṃ hṛtvā rājā parṣadi dāpayet / sarvasvaṃ tu hared rājā caturthaṃ vā 'vaśeṣayet // bhṛtyebhyo 'nnaṃ smaran* (v.l. *'nusmaran*) *dharmaṃ prājāpatyam iti śrutiḥ //* This borrows in part from Nārada, and expands the idea in an apocryphal passage of Manu (Vivāda-ratnākara, 637, Vyavahāra-nirṇaya, 532: *nādadīta nṛpaḥ sādhur mahāpātakino dhanam* ...).

237 Derrett, BSOAS, 21 (1958), 61–81; ZVR, 64 (1962), 70–2.

237a Vijñāneśvara, Mitākṣarā on Yājñ. I, 260–1.

238 E.g. smṛti quoted at Vivāda-ratnākara, 38 and Smṛticandrikā, 326 (HLS, I, 171; Dh. k. 655): *balād akāmam yatrādhim anirdiṣṭaṃ praveśayet / prāpnuyāt sāhasaṃ pūrvam ādhātā cādhim āpnuyāt //* The penal provision, and the crime, are

ing once only and attributed to named authors may in fact be apocryphal. Kātyāyana is cited by the Vyavahāra-nirṇaya on partition, for a rule which seems to have been strangulated or at best invented by the author or his source[239]. Kātyāyana 165 A–B are only found in the commentary on the Viṣṇu-smṛti[240], which hardly inspires confidence.

A remarkable feature of our primary sources distinguishes them, with one significant exception, from Roman, Jewish and Islamic law. They bear a certain likeness, in this respect, to decadent European medieval legal literature, and the 'maxims' of English law of the fifteenth century and afterwards[241]. All the Indian sources abstract their precept, eliminating reasons; and, where reasons *are* given[242], the commentators thought it prudent to ignore them. Never is a case or actual problem referred to. If an allusion to a law-case occurs it is a mythical one[243]. The proposition is always dry. Surely the period when Indian jurists identified or analysed their problems in practice is far past. Even by the time of Gautama problems had been thrashed out many times before. The Sitz im Leben of the formula is never given. Apart from the lapidary XII Tables Roman legal sources in antiquity reflect the problem as it comes to the jurisconsult: only in the Byzantine period do abstract propositions have a life of their own, and even then the occasion for the legal utterance is preserved[244]. Total abstraction arises when, in the middle ages, inelastic minds are fed with raw maxims[245]. Englishmen in India were forced to instruct the pandits who produced the Vivādārṇava-setu[246] to envisage problems, e.g. 'a man died leaving such-and-such relatives, how will the estate pass ?,' and a series of real-life problems was envisaged and answered (as they constantly are in Islamic works)[247], but then, too, without the reasons, which the student is left to work out for himself. The Vivādārṇava-setu, towards the end of the literature, throws light on a feature of all that proceeds. In contrast to other juridical literatures, the *śāstrīs* provided, at most, differences and contradictions between anonymous authors, whose texts were often doubtful, and whose reasons had usually to be conjectured. The size of India, and the great age of the intellectual endeavour, go a long way to explain this; but it is more significant that the student

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unknown elsewhere. The text is assigned to Kāty. (Kane's Kāty., 527, p. 66). A list of citations of '*smṛtyantara*' not assigned to any author but relied on by jurists in *vyavahāra* contexts: Dh. k. I/2, lxxviii; even more anonymous texts figure ibid., lxxix *(anirdiṣṭa-kartṛka-vacanāni)*.

239 Vyavahāra-nirṇaya, 427, the text *kṣetrārāma-gṛhādīnām*.

240 Vaijayantī, I, p. 61.

241 Stein, op. cit., chh. 7–9.

242 E.g. Manu XI, 93, 96. See above, n. 158; below nn. 271–5.

243 Haradatta on Āp. I. 11. 32, 24. The solitary instance in Asahāya's comm. on Nār. (Kane, HD, III, 288–9, n. 395) has an apocryphal air.

244 Stein, op. cit., chh. 4, 6.

245 Ibid., ch. 7.

246 See n. 367 below.

247 Verifiable from N. B. Halhed's trans. (A Code of Gentoo Laws, 1776). The Veṅkaṭeśvara Press (Bombay) edn. of 1888 is rare, and uncritical.

of *smṛti*, though equipped to be appointed a judge, was traditionally only a judicial assessor, skilled in normative thinking, and not in recollecting, or comparing, individual cases.

At both ends of the Manu-story (so to speak) the opposite prevailed. The Buddhist law, laid down painstakingly bit by bit[248], arises from what appear to be a series of legislating decisions of the Buddha in known contexts. The books of Burmese Buddhist law detail the rules customary amongst Burmans of relatively modern times, never without contact with remembered problem situations[249]. The sūtras and smṛtis, on the other hand, even at their most archaic, purported to be the teaching of pseudonymous sages figuring as super-ancestors. Timeless in antiquity, the teaching purported to antedate all actual human problems. All precedents mentioned in smṛtis are mythical (Vena[250], Manu[250a], Kapila[250b], Kavi[251], Śunaḥśepa[252], and Māṇḍavya[253]). By contrast, the *nīti-śāstra* was not averse to referring to historical, or would-be historical incidents[254]. The sages of our *śāstra* merely 'remembered' their law; it never emerged from a set of facts. Their words stood upon unquestionable personal *pramāṇa*[255], as would be expected of a culture which, immobile or imperceptibly mobile, treated its seniormost members as oracles. 'Hindu law' was thus never a system given by a Buddha, or a Muhammad; no reformer made it, and no consensus of scholars (as with the Jewish rabbinate) could remake it. No matter what logic and mīmāṃsā did with the smṛti texts, it was those texts that remained the authority (hence the value of those aids to interpretation), and to trace them back to a process of human discovery would weaken their function. Hence our primary sources were not more primitive than the Roman, but more sophisticated. They were evolved out of the requirements of a civilization differently balanced, and infinitely more complex.

Examples are needed to illustrate the diversity of our material, and its attempts to achieve the very difficult task its authors undertook. The essence of what was teachable had to be put into words. Moral and legal precepts were related. Precept and statement differ, and our authors can utter each separately, or both together. 'The food given by a physician, hunter, surgeon, a fowler, an

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[248] Mahāvagga and Cullavagga (trans. T. W. Rhys Davids and H. Oldenberg, Vinaya Texts, SBE, 13, 1881; 17, 1882).

[249] D. Richardson, ed. and trans., Damathat or Laws of Menoo, 2nd. edn. (Rangoon, 1876); U. Gaung, The Aṭṭasankhepa Vaṇṇana Dhammathat (Rangoon, 1934).

[250] Manu VII, 41; IX, 66–67. For these and other names see Kane, HD, I², 336.

[250a] Manu VII, 42.

[250b] Baudh. II. 6, 30.

[251] Manu II, 15.

[252] References at V. N. Mandlik, Vyavahāra Mayūkha (1880), 454 nn.

[253] Bṛh. II, 13; Nār., Introd., I, 42, alluding to the story at Mahābhārata I, 101 (crit. edn.).

[254] The assassinated kings: Derrett, ZDMG, 115/1 (1965), 147–8 (à propos of Manu VII, 153; Kauṭ. I, 20).

[255] Yama, quoted in Lakṣmīdhara's Kṛtyakalpataru, Brahmacāri-kāṇḍa, 23–4 (cf. Kane, HD, I², 527–8).

unfaithful wife, or a eunuch must not be eaten' is a precept[256]. 'A man falls by not observing what is laid down, by observing what is prohibited, and also by not bringing the senses under control' is a precept masquerading as a statement[257]. Hope can masquerade as a precept: 'The seniority of Brahmins is from knowledge, that of Kṣatriyas from valour, that of Vaiśyas from wealth in grain, that of Śūdras alone from (mere) age'[258]. Maxims which show the moral and the legal overlapping, with a tendency to generalise, abound and are often successful. 'A wife, a son and a slave, these three are declared to have no property; the wealth which they earn is for him to whom they belong'[259]. 'He who, having incurred a debt or the like, does not pay it back to the creditor (or 'owner') is born in the latter's house as a slave or a servant, a woman, or a beast'[260].

Good *smṛti* style produces a fully self-contained statement. 'Where a thing deposited is destroyed even without the act of fate or the king together with the goods of the bailee, the loss is declared to be that of the depositor'[261]. But the form incurs strain. Definitions are called for, and these too have to be stated in *smṛti* form; these are then capable of being misappropriated elsewhere[262]. Many smṛtis cannot deal with the topic at one blow. To correct the picture a contradictory text is required, and this is enhanced when material is taken over from earlier sources. Even Manu finds comprehension aided by attacking a topic from different angles: 'The *ācārya* is ten times more venerable than the *upādhyāya*, the father a hundred times more than the teacher, but the mother a thousand times more than the father' (II. 145); 'Of him who gives natural birth and him who gives the Veda, the giver of the Veda is the more venerable father; for the birth for the sake of the Veda gives eternal (rewards) both here and after death' (146); 'By honouring his mother he gains this world, by honouring his father the middle sphere, but by obedience to his teacher the world of Brahma' (233). Thus adjacent smṛtis not infrequently overlap, control, or contradict each other[263].

Many smṛtis contain allusions, especially words in need of definition, which must be made good from elsewhere. 'What is acquired by valour and by learning

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[256] Āp. I. 6. 19, 14.

[257] Yājñ. III, 219 (cf. Manu XI, 44). On degradation see Manu XI, 125–6.

[258] Manu II, 155 (cf. 156).

[259] Manu VIII, 416.

[260] Kāty. 591. Other examples: ibid., 854; Nār. I, 32; Manu IX, 1, 12, 206; Kāty. 691; Bṛh. XXV, 88; Yājñ. I, 85 (cf. Manu V, 448).

[261] Kāty. 598.

[262] Bṛh. XI, 54–8 (expedients to realize debts); Kāty. 173–86 (like a sūtra and its commentary); ibid., 755 (classes of road); 678–82 (corporate bodies); 498–50 (types of interest); 564–5 (invalid debts). A definition of reunion (of family assets) had to await Bṛh. XXV, 72.

[263] Kāty. 396–7; Nār. I, 269–70; I, 10–11. Enhanced when material is taken from other sources: Nār. I, 251, 257–8 (ordeals); I, 168–71 (on witnesses' memory); XVIII, 44–46 (gifts from kings); Manu IV, 165, 167, 169; VIII, 350–1 (on self-defence); IX, 57–63, 64–8 *(niyoga)*. Cf. Manu IV, 80 with ibid., X, 125.

and what is known as wealth of the wife—all this is not liable to be partitioned by co-sharers at the time of partition'[264]. Sometimes the effort to be comprehensive is too much for the author. 'But in the case of untouchables, the lowest people, slaves, mlecchas and the offspring of unions in the reverse order of caste, who commit a sin, the decision does not lie with the king. He should appoint such ordeals as are well known amongst them in case of doubt'[265]. Sometimes the smṛti is much too terse. 'Should even a wholly dependent person make a contract on behalf of the family, the householder, whether in his own country or abroad, shall not rescind it'[266]. 'Let him not take interest beyond the year, nor such as is unapproved, nor compound interest, periodical interest, stipulated interest, and corporal interest'[267]. Often it is cryptic[268]. Sometimes the cryptic formula is followed immediately by an attempt to decode it. 'Let him eat *vighasa* always, or always dine on *amṛta: vighasa* is the remainder of a (ceremonial) meal and likewise *amṛta* is the residue of a sacrifice'[269].

Homely illustrations are sometimes used[270]. Reasons, as we have seen, are rarely given, and when they are it is not clear whether it is to convince the hearer or reassure him. One begets children, not to pay their debts, but vice versa[271]. One avoids liquor because of the unseemly effects of drunkenness[272]. The wife of a slave becomes a slave because his master must be hers[273]. Sons produce a family and heaven: therefore women must be guarded[274]. Liquor *(surā)* is refuse: therefore one should not drink it[275]. Rebellion would occur if custom were infringed: hence the king should preserve it[276]. Where resolving alternative solutions to problems would create a new one, alternatives are put baldly side by side[277]. Views on a subject may be merely juxtaposed[278]. Settled opinion is frequently adduced, with an air of satisfaction. The reinterpretation of ancient formulae hides behind the appearance of merely transmitting traditional

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264 Kāty. 877.

265 Kāty. 433. Similarly: Yājñ. I, 52; Manu VII, 154; Kāty. 192.

266 Manu VIII, 167. Expanded or explained at Kāty. 545 (referring to Bhṛgu), Bṛh. XI, 50.

267 Manu VIII, 153, amplified in Bṛh. XI, 5–11. Manu VIII, 49 is amplified at Bṛh. XI, 55–58; and Bṛh. XIV, 20–32 seem to derive from Manu VIII, 2, 11.

268 Nār., Introd. I, 8–9; Manu VII. 13 (Kane, HD, I², 569); VIII, 24, 185; IX, 121.

269 Manu III, 285 (confusion of *amṛta* with that at IV, 4–5 (only a few verses away)).

270 Nār., Introd. I, 38, 63, 72. Manu VIII, 350–1 states the principle of self-defence with exaggerated and unpractical illustrations.

271 Kāty. 572.

272 Manu XI, 97.

273 Kāty. 725.

274 Yājñ. I, 78.

275 Manu XI, 94.

276 Bṛh. II, 28.

277 Manu VIII, 338; IX, 164; Āp. I. 2, 11–16; 31–37.

278 Kāty. 823; Āp. I. 6. 19, 2–5; 7–9.

material[279]. Tendentious repetition really amounts to an attempt at reform[280]. Open correction of earlier statements is rare, but obviously not in the hope of obliterating the precepts corrected, so much as to add another alternative, so that the public could make its choice[281].

The Indian genius for categorising finds full scope. Ordeals are divided by value and by caste[282]. Different periods are set within which kinsmen may impugn a sale[283]. Nine types of 'adultery' are listed[284]. Yet, from earlier strata, there survive many examples of a failure to generalise, and a serial listing of incongruous elements. 'What is gifted or done by one intoxicated or one who is a lunatic or by one who had a different intention, that does not at all attain validity'[285]. 'Nor [should one summon as a witness] one engaged in a long journey, nor a merchant who travels into transmarine countries, nor a religious ascetic, nor one sick, nor one deformed, nor one man alone, nor a learned Brahmin, nor one who neglects religious customs, nor a eunuch, nor an actor . . . nor an adversary . . . nor a spy, nor a relation, nor one connected by the same womb . . .'[286]. Dispiriting enumerations without attempt to generalise are common[287]. As a result incorrect associations occur sometimes which would not have been tolerated otherwise. 'One should not plant anything on the road nor should one obstruct it by placing anything on it. A man who does not give precedence on the way to his *guru*, preceptor, the king and the like is liable to fine.'[288] Yet the capacity to generalise was present: otherwise the following could not have been used: 'What is mortgaged or sold through deceit or what is gifted or accepted through deceit or wherever the judge sees fraud, all such transactions he should annul.'[289]

Unnecessary detail is an opposite fault, and untimely precision is not at all rare[290]. The rule that a widow shall be given 2,000 *paṇas* out of her husband's

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[279] Bṛh. II, 18–27 (types of judgment); Yājñ. I, 58–61 (forms of marriage) (?); Kāty. 35–46 (sources of rules). Nār., I, 157–162 (Nāradīya-Manu-saṃhitā 134, 139, 141) is an awkward performance: the first category of witness is unexplained and the rest are wrong.

[280] Bṛh. XVIII, 4 (Renou, IIJ, 6, 1962, 95–6); XI, 54–8; XXV, 86.

[281] Yājñ. I, 56; cf. Manu III, 13–19 (marriage); Bṛh. XXV, 79–81; cf. Manu IX, 219 (impartible property).

[282] Kāty. 418–22.

[283] Kāty. 703.

[284] Kāty. 829.

[285] Kāty. 464.

[286] Nār., I, 179–87. See also Nār. XII, 73–5; Manu VIII, 65 (a list, every item of which has a different, unexplained, reason behind it).

[287] Kāty. 650–1; see also ibid., 542–3, 550, 568, 647, 664, 734, 749, 846, 882–3; Manu X, 87; Yājñ. III, 36–9. For an exhaustive list see Nār., Introd. I, 52–4.

[288] Kāty. 756. Ancient codes (Eshnunna, Ḥammurabi) group rules associated only by the factual context (e.g., boats): B. S. Jackson, 'Factbased classifications of law,' J. Soc. Public Teachers of Law, N. S., 11/3 (1971), 149–53.

[289] Kāty. 655. See also Bṛh. II, 5; Manu VIII, 288.

[290] Cf. Bṛh. XXV, 69; Nār. HLS, II, 474. Derrett, JRAS, 1958/2, 17–25.

estate is a good example, and the large number of texts specifying fines precisely[291]. The epics seem to borrow largely from the smṛtis, and are occasionally themselves cited by the commentators[292]. They (the epics) have the leisure to avoid almost all the smṛtis' faults, which goes some way to support the view that Mahābhārata material resembling Manu was taken from our Manu-smṛti or an earlier stage of the materials quarried by its author[293].

Much is made by historians out of contradictions within a smṛti (which we have noticed) and those between smṛtis. Of the innumerable examples available one illustration is needed to show the size of the intellectual problem before the medieval and later commentators and treatise-writers. The following five verses deal with the acquisition of property by possession.

'A man who enjoys (i.e. possesses) property without title even for many hundreds of years should be punished like a thief'[294].

'Even in the absence of title, if a property has been in total possession by three ancestors, it cannot be recovered, having passed from one generation to another, for three generations'[295].

'If possession of an estate has been held by three generations in due course, the fourth in descent shall retain it in his property—even without a written title'[296].

'If a man's landed property has been enjoyed by another for twenty years—while a powerful king is reigning—his rights over that property cannot be established'[297].

'If a man sees, without protesting, his landed property being enjoyed by another, he loses it after twenty years; chattels are lost in ten years'[298].

The digests alone confirm what a huge contribution was made by purāṇas to our *śāstra*. In a simple style, hortatory and descriptive, they link rituals with cults, notably Vaiṣṇava cults; they pander to the desire of all castes to have a Veda open to all. Dates are hazardous in this area[299]. Purāṇas had evidently achieved fame and authority by about 1100. There are no running commentaries upon them. They were educationally self-sufficient. Did *śāstrīs* commit their interminable materials to heart? Enlarging communities certainly needed

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291 E.g. Yājñ. II, 223, 227. Cf. Plato, Laws, 948a.

292 B. Bhattacharya, Studies in Dharmaśāstra (cit. sup), 3–7, 53–6. The Rāmāyaṇa is quoted also by Bhār. on Manu XII, 106. P. V. Ramanujaswami, ed., Dharmasaṅgraha (Tirupati, 1951) relies substantially on the epics. On the epics and the *śāstra* see Kane, HD, I^2, §. 32, esp. 380–402. J. Dahlmann, Das Mahābhārata als Epos und als Rechtsbuch (Berlin, 1895).

293 Kane, HD, I^2, 344–5.

294 Nār. IV, 87 (HLS, I, 124).

295 Nār. IV, 91 (HLS, I, 125).

296 Viṣṇu VII, 187 (HLS, I, 125).

297 Vyāsa (Aparārka, 612) (HLS, I, 128).

298 Yājñ. II, 24.

299 Kane, HD, V, 831–6. R. C. Hazra, Studies in the Upapurāṇas (Calcutta, 1958–63). The Matysa-purāṇa is of great age, possibly of the fourth century A. D. (Kane, V, 899–900).

what they had to supply. The appeal to divine revelation was overt and it suited the popular feeling that all custom, and all justice (not to speak of *dharma*) must go back to cosmic forces. And some ancient literature called purāṇas (how much of it survived ?) was certainly accepted in very ancient times as source material for the *śāstra*[300], and the pseudonymous compilers took advantage of this. Jurists utilised a mass of purāṇas: the Ādi, Āditya, Kālikā, Kurma, Garuḍa, Devī, Narasiṃha, Nāradīya, Padma, Brahma, Brahmavaivarta, Brahmāṇḍa, Bhaviṣya, Bhaviṣyat, Bhaviṣyottara, Mārkaṇḍeya, Matsya, Liṅga, Varāha, Vahni, Vāyu, Vārāha (was it different from the Varāha ?), Viṣṇu, Viṣṇu-dharma, Viṣṇudharmottara, Śivadharma, Śivadharmottara, Saura, and Skanda. It is remarkable that the commentators found in them essential ingredients for the statement of legal rules[301], and that, from a comparison of purāṇic contributions to the *vyavahāra* part of the *śāstra*, they seem to be responsible for conservative and defensive, rather than liberal tinges to the subject[302].

Tantras also served as potential sources of *dharma*[303]. A notorious example is also the last, the Mahānirvāṇa-tantra. Under the impression that any religious sect could claim the privilege of being governed by its own religious law, an addict of the Kaula, i. e. Śākta tantric religion, a reforming sect of Śaivas, wrote a conversation between Śiva and Pārvatī in which not only tantric rites but also a system of jurisprudence was set out, owing some inspiration to an early phase of Anglo-Indian law[304]! It even deceived Rammohun Roy. The rather later Śukranītisāra[305] claimed only to be a manual for the practical administrator, and escaped detection as a modern work until very recently: it originated outside British India and did not incur the criticisms to which the tantra's advocates' enthusiasms exposed it in the British Indian courts and otherwise.

(II) The teacher extended beyond his class: *(A)* the simple commentary—

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300 Yājñ. I, 3. Sarasvatī-vilāsa, 14. Kane, HD, I², §. 33; V. ch.xxii. R. C. Hazra, 'Purāṇas in the history of smṛti,' IC, 1 (1934–5), 587–614. B. Bhattacharya, Studies in Dharmaśāstra (cit. sup.), 17–23. On the Agastya-saṃhitā see ibid., 13–15.

301 The Matsya-purāṇa is often cited in *vyavahāra* contexts, as shown at Dh. k. I/2, lxxx. The seven degrees of *sapiṇḍa* kinship are carefully explained in the Mārkaṇḍeya-purāṇa (see Dh. k. 1530). Important on suttee is the Brahma-purāṇa (Dh. k. 1118–9); and the Kālikā-purāṇa has vital information on adoption (Dh. k. 1376–7) and valuable material on ordeals. Jurists rely often on purāṇas: see Kane cited in n. 300 above.

302 Derrett at Purāṇa 5/1 (1963), 11–30. Jurists' caution in regard to such texts is evidenced ibid., 30 n. 16. For a jurist's scepticism as to the genuineness of texts of Jātūkarṇa see Kane's telling quotation from the Hāralatā of Aniruddha (c. 1160) at HD, I, 276 n. 592.

303 V. N. Mandlik, Vyavahāra Mayūkha (1880), xli–xlii. The Bhaviṣya-purāṇa (ch.xi) recognises tantras in relation to the consecration of trees, etc. The Vīramitrodaya, Paribhāṣā-prakāśa, 20–1 accepts tantras as sources of *dharma*.

304 Derrett, ZVR, 69/2 (1968), 138–81. Further references at the same, Critique of Modern Hindu Law (1970), 416.

305 Ed. Oppert (Madras, 1882), Jīvānanda (Calcutta, 1892). For Gopal see above, n. 25 (also Kane's comment on the discovery).

Subject to surreptitious amendment by covert changes in wording, and to tendentious adjustment by quotation of ancient texts in new contexts, the pre-purāṇic and pre-tantric compositions were authoritative and co-equally binding upon orthodox Hindus, subject to valid customs to the contrary. Discussions of textual variants showed that the concept of a true or original Manu, etc., was established[306]. Some time before the seventh century the simple commentary had arrived. Words had become obsolete or ambiguous[307]. Ellipses needed to be filled. Flexibility had to be found in a text incapable of being repealed. Some smṛtis almost died at this period, and many must have disappeared silently. Manu and Yājñavalkya inspired a row of commentators. Nārada has one surviving commentator[308]. Commentators found it their duty to draw meaning from every part of their text, to explain what was repetitious[309], and to fill out the meaning by adducing parallel passages. A student could refresh his mind, or even complete his training with a commentary which explained most of the words in a text which he possessed already (because he had learnt it by heart) but had never fully understood. The commentator adopted a modest tone, frankly admitting that any of several incompatible interpretations might be correct, and sometimes he said that further (unspecified) explanations were called for[310]. A comparison of commentaries, if really independent of each other, reveals great differences in approach and understanding[311]. The original texts were compiled with such caution that they could not be dismissed the moment they encountered incredulity, or were handled by scholars of a region passing through a phase of contrary development. The smṛtis that survived the period of the earliest commentators proved their tensile strength. Yet the commentator never exceeded his text in prestige. He merely showed what the true authorities might have meant. A name such as Saṃgraha-kāra (the Author of the Collection) epitomises the modest, self-effacing loyalty to the basic sources which inspires this intellectual effort.

Works in the *A* category must once have been very numerous. Digests and specialist works contain condensed extracts which, masquerading as bare comments on the smṛtis, really belong to this class, but their surviving repre-

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[306] Bhār. on Manu X, 126. See above, n. 124.

[307] Manu VIII, 325 and IX, 219 have examples. *daśabandham* in Manu VIII. 107 called for explanation, an archaic expression. At Manu VII. 147 the word *niḥśalāka* appeared clear to Bhāruci, but Medh., Govindarāja, and Nandana thought it meant 'where even grass does not grow,' and Kullūka, Nārāyaṇa, and Rāghavānanda thought it meant 'solitary.' L. Sternbach, Gonda Fel. Vol. (Leiden, 1972), 200–1.

[308] Asahāya, see below, n. 312.

[309] If a substantive purpose could be found for the words, repetition was not admitted: Bhār. on Manu VIII, 63.

[310] Bhār. on Manu IX, 287; X, 84, 126; XI, 163 ('some other solution must be found'!).

[311] Nandana may be compared with other commentators printed by V. N. Mandlik in his Manusaṃhitā (Bombay, 1886). Sarvajña-Nārāyaṇa (Kane, HD, I², 347) constantly shows originality (but the ideas may long have antedated him).

sentation is poor. Asahāya wrote on Gautama, Manu, and Nārada in the 6th or 7th century[312]. Viśvarūpa's Bālakrīḍā (? 800–825)[313] on the Yājñavalkya-smṛti is short on *vyavahāra*, long on *ācāra* and *prāyaścitta*. He may have been identical with Sureśvara, a pupil of Śaṅkarācārya. Bhāruci (7th cent.) was probably a teacher in the line of predecessors of Rāmānuja[314]. He wrote a *vivaraṇa* on the Manu-smṛti and also a commentary on Viṣṇu. Medhātithi (9th cent.), the most celebrated commentator on Manu, produced in his Manu-bhāṣya a huge repertory of opinion on the meaning of the smṛti and on some fundamental questions of *dharma* and law[315]. Govindarāja's commentary on Manu (c. 1050–1125)[316] and Haradatta's commentaries on Āpastamba and Gautama (c. 1100–1300)[317] are not only roughly contemporary in time, they jointly prove the continuing usefulness of this style of publication within *śāstric* education. Kullūka-bhaṭṭa's Manvartha-muktāvali (c. 1150–1300)[318] is famous, ever since the over-dramatic eulogium passed on it by Sir William Jones, for its competent plagiarism of earlier commentators and its lucidity and certainty. Śūlapāṇi's commentary on Yājñavalkya (c. 1375–1460)[319] is disappointingly short, and is said to be an early effort. It seems, in sum, that the older commentaries continued to be used to train beginners, but that when this process was complete other, more flexible materials were sought.

—*(B)* the comparative scholar, servant of higher studies, and *(C)* the controversialist—

A few *śāstrīs* will always have known the opposing views of their predecessors, the outstanding opinions of their contemporaries, and the trends of the times, towards which any exposition of law is bound to take a stance, even if only tacitly. Two classes of jurist emerged between the twelfth century and the seventeenth. The most numerous seem to have taught a course of *śāstra*, covering the main areas of *ācāra*, *vyavahāra*, and *prāyaścitta*, with occasional excursions into minor areas. Compared with them the teacher of ritual was an inferior practitioner. Specialists in conveying a complete education, the former class would attempt to combine within a commentary on one smṛti the views of all the smṛtis, so that the harmony of all smṛtis would be achieved. Polymaths, original minds operating in many śāstras concurrently, are known to

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312 Kane, HD, I², §. 59.

313 Ibid., §. 61.

314 Ibid., §. 62. The text, ed. and trans., Derrett, awaits publication (See Biblio.)

315 Kane, HD, I², §. 64. Bengali trans. of Medh. by Bhūtanātha Saptatīrtha, 4 vols. (Calcutta, 1954). Derrett at Fest. O. Spies (Wiesbaden, 1967), 18–41.

316 Kane, HD, I (1930), §. 76.

317 Ibid., §. 86.

318 Ibid., §. 88. The Śrāddha-sāgara belongs to Śūlapāṇi: D. C. Bhattacharya, IHQ, 27/2 (1951), 109–18. B. would place K. in 1250–1300, as the third son of Jagadguru Divākara-bhaṭṭa, contemporary of Udayanācārya.

319 Kane, HD, I, §. 95. Bhattacharya (last n.) places Ś. between 1420 and 1465. S. C. Banerji, NIA 5 (1942), 31–5, 145–56, 169–75 (lit.). See n. 350 below.

have existed[319a]. To this period, though no doubt to its earliest part, belong the verse compositions purporting to give the gist of many smṛtis (Ṣaṭtriṃśan-mata, Caturviṃśati-mata)[320]. Upon these works, often quoted by jurists, no commentaries were written. The comprehensive commentary in prose was thus a more fragile and less attractive (though, obviously, less artistically demanding) alternative to the digest in verse, of which small examples recur in all later periods[321].

Appearing as a commentary written, physically, around the consecutive stanzas of the smṛti, or, in a few cases, the sūtra, the result was a harmony or synopsis, excluding superfluous materials, but not disguising the conflicts between those which demanded attention. Each paragraph was concluded with observations which the student was expected to absorb. Didactic presentations of discordant, co-authoritative sources, these works would be required by any aspiring teacher, and to repeat the gist of any one would be part of the exercises demanded of any candidate for a qualification in the śāstra.

Works of authors appropriate to class *B* must once have been numerous. Vijñāneśvara's Mitākṣarā lies here rather than in class *A*. It is to be dated 1120–1125[322]. Its comprehensive resolution of intellectual and practical problems (especially in the fields of penance and inheritance due to widows and female and cognate heirs generally) made it one of the few great books of the *śāstra*. 'Aparārka,' who may or may not have known the Mitākṣarā, and must be dated within 1115–30, purports to have been compiled by (i.e. at the orders of) Aparāditya-deva I, of the Śilāhāra family of the Koṅkaṇa[323], and is a large repertory of texts, including many purāṇic passages. It has an affinity with the Kṛtyakalpataru, which its author(s) may have used. Centuries afterwards arises another specimen of this type, Nanda-paṇḍita's Vaijayantī on Viṣṇu, a work with original ideas[324], dated with the equivalent of Nov. 1623. After a long interval comes Bālaṃbhaṭṭa's commentary on the Mitākṣarā (1730–1800), which, while purporting to be a subcommentary, is a small digest.

A further class of the greater jurists were essentially controversialists, whose products were not written around smṛtis, nor purported to be exhaustive treatments. The authors were not encyclopedists, though they may have nursed

[319a] Epigraphia Carnatica VII, Sk. 105 (A.D. 1193) (the case of Vāmaśakti): D. Lorenzen, ABORI 52 (1971), 97–139, at 126–7.

[320] Kane, HD, I, §. 42, 53.

[321] E.g. Śūlapāṇi's Dattaka-viveka (seventeen lines), and the anonymous Dāya-daśa-ślokī, on which see Derrett, RLSI, 259–60, 261, 270 and ALB, 33 (1969), 140–2. Also n. 143 above and 322 below.

[322] Kane, HD, I, §. 70; K. V. R. Aiyangar, ed. Lakṣmīdhara, Kṛtyakalpataru, Vyavahāra-kāṇḍa, 397 n., Dāna-kāṇḍa, Introd., 31. Derrett, JIH, 30 (1952), 35–55; Madras Law J., 1952, vol. 2, 9–14 (Journal sect.). Vijñāneśvara's pupil Nārāyaṇa's Vyavahāra-śiromaṇi (ed. T. R. Chintamani, AOR, 4, 1939–40, pt. 2; 5, 1940–1 (pp. iv, 56)) is a small digest in category D. Vijñāneśvara's own Āśauca-daśaka is at Kane, HD, IV, 832–3 (cf. ibid., 273). Mit. rejected: Rocher, JOIB 1 (1952), 221.

[323] Kane, HD, I, §. 79.

[324] Derrett, BSOAS, 1965/3, 643–4.

ambitions in that direction, if life sufficed. Jīmūtavāhana was an example[325]. His remains the best treatise in class *C*, of which there are very many scattered minor examples. Jīmūtavāhana's long and elaborate thesis that succession is based on the principle of the supersensory benefit the heir can perform for the deceased is the longest of its kind: the Dāyabhāga. He was a Bengali (fl. 1090–1130) who aimed to produce a 'Dharma-ratna,' of which we possess only the Vyavahāra-mātṛkā (which belongs essentially to class *E*) and the Kālaviveka. Nanda-paṇḍita's Dattaka-mīmāṃsā is a comparable work on adoption[326]. The Dharma-dvaita-nirṇaya of Śaṅkara-bhaṭṭa[327], father of Nīlakaṇṭha (below) is a series of essays in this category. It is invidious to pick out specimens, but some that have been published or are referred to prominently, especially works of the eighteenth and nineteenth centuries, deserve passing mention as evidence of the industry and subtlety of the jurists. Special texts on the adoption of strangers as sons[328], on the purpose and practice of suttee[329], on the competing claims of certain remoter relations to succeed to an inheritance and the terms subject to which they may succeed[330], and others, published[330a] and unpublished, manifest the same spirit of research that lies behind the greater works, and links them, on the other hand, with the humble routine *vyavasthās* of which we have many specimens from Court pandits.

The common characteristic of these authors is their reliance on mīmāṃsā to explain away difficult texts, and settle controversies. What are now recognised as critical techniques hardly figured. It may be of interest to recognise the style of argumentation: the opposing view is stated first, with a sign that it is disapproved, or even without this. The reasons and citations behind that view are bracketed carefully with it. The denial and refutation follows, bearing its own reasons and citations. Expected objections to the argument or any article of it are stated and refuted as the exposition progresses. What would take up to an hour to expound as a lecture can be compressed onto a page. In view of the concise nature of the diction, and the highly technical character of the

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[325] Kane, HD, I, §. 78. M. Chakravarti, JASB, 11 (1915), 313–27. H. C. Chatterjee, OH, 6/1 (1958), 43–54 (a commentary on the Dāyabhāga). L. Rocher, JOIB, 3/2 (1953), 134–46 (the Vyavahāra-mātṛkā).

[326] Kane, HD, I, §. 105.

[327] 1540–1600. Kane, HD, I, 747. A specimen of his work trans. Derrett, BSOAS, 20 (1957), 203–15.

[328] Asapiṇḍāsagotra-putra-parigraha-parīkṣā (c. 1700) (Kane, HD, I, 511; III, 679, n. 1281).

[329] Anantarāma, Sahānumaraṇa-viveka (Kane, HD, I, 662).

[330] Śvaśrū-snuṣā-dhana-saṃvāda, ed. Derrett, ALB, 31–2 (1967–8), 538–53 (see also ALB 33, 1969, 135 n. 1); trans., the same, JGJRI, 24 (1968), 263–77. Devarasuta-sapatnī-sutā-dhana-vivāda, ed. Derrett, ALB, 33 (1969), 148–78.

[330a] S. C. Banerji, ed. and trans., Bhavadeva-bhaṭṭa, Saṃbandha-viveka (on marriage), NIA, 6 (1943), 252–60. R. C. Hazra edited the same author's Śava-sūtakāśauca-prakaraṇa (Calcutta, 1959); the gross blunder of all the manuscripts at p. 38 (see introd., p. xxi) illustrating perfectly the hazards of literary tradition in this field.

subject-matter, perfect manuscript copies do not survive, a fact which has lowered the standard of all but luxury printed editions.

—*(D)* the administrator-scholar, and *(E)* the digester of conflicting views.

Comparative work on the principal sources was done by the commentators. Specialists attempted to exhaust the potential of individual areas of law. Sooner or later jurists would divide the subject into sections and propound the law independently of their predecessors. The *śāstra* grew as sections divided and multiplied. This was so although individuals would differ as to where items belonged: one author would deal with suttee under Vows, and another under Penances—neither was wrong, the widow's act was a vow as far as she was concerned and operated as a vicarious penance for her husband. These scattered efforts would sooner or later be coordinated, digested.

The author of a digest engaged in the same task as his predecessors (indeed digests had begun before the greater commentaries were finished). The digester responded to an educated need, to teach the subject, not a text. But the 'digest' *(nibandha)* bifurcated into two forms. In the first *(D)* the author wrote his restatement of law as a collection of smṛtis, sūtras, purāṇic or similar quotations (with scissors and paste), with the minimum of elucidation—the primary sources told their own tale in their own ways on his pages. The second *(E)* category turned out to be more highly prized. Authors wrote their statements as lectures, quoting their authorities as they went along. The bulk of argumentation by the author thus equalled, or exceeded, the bulk of supporting citations.

Smṛtis, authentic and supposititious, ancient and modern, had swelled into an inconvenient bulk, and threatened to get out of hand. Kings gained reputations from enlarging the scope and efficiency of *dharma* within their borders. Moreover kings could afford to supply *śāstrīs* with books, amanuenses, and materials, so that copies of scholarly works could be disseminated throughout the kingdom and even presented to neighbouring rulers for their admiration. Without such patronage even the best-organized work could not easily reach the specialists who could best use it. Kings employed *śāstrīs* of renown to compile authoritative digests which would tend to suppress doubtful smṛtis, enhance the attention paid to leading authorities, and at the same time provide materials for the improvement of *śāstric* learning. Enlightened opinion might, or might not, be impressed as well as better informed by this enterprise. Important and petty sovereigns engaged in this inexpensive undertaking, thereby giving scholars unrivalled opportunities for airing their opinions. Pratāparudra's patronage (see below) gave his client Brahmins an opportunity for a display of theoretical expertise which in reality abused his hopes. The well-meant hope that all previous studies would be rendered obsolete[331] came to nothing, not merely because the bulky fruits of the royal patronage were not disseminated sufficiently well, but because, unlike Justinian who ordered Tribonian and his col-

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[331] The passage from the Sarasvatī-vilāsa (Kane, HD, I, 411) handled by Derrett at Mélanges Macqueron (Biblio. below).

leagues appropriately, the *śāstrīs* had neither the authority nor the power to expunge smṛti authorities which were discordant with their view of dharma, and to known contradictions new uncertainties were added. It was still the responsibility of each judicial assessor or moral arbitrator to pronounce according to the best information available to him in the light of his own discretion and experience, and the *śāstrīs* of the palace could not shift this from his shoulders.

Relatively few works come within class *D*. Of Bhavadeva's works only fragments survive[331a]. Govindarāja's Smṛti-mañjarī is a verse digest (11th cent.) of which the penance section is available in manuscript[332]. Halāyudha's nibandha (11th cent.) was a prime authority, now lost[332a]. Lakṣmīdhara, a minister of a northern Indian king, Govindacandra (c. 1104–54) wrote the Vyavahāra-kāṇḍa and other kāṇḍas of the enormous Kṛtyakalpataru[333]. A great repository of smṛti and purāṇa lore on all aspects except penance, the work was quarried by subsequent jurists, and nearly failed to survive. Ballālasena, king of Bengal, helped by his guru Aniruddha-bhaṭṭa (1175–1200) produced the Dānasāgara and other works rich in purāṇic material[334]. Varada-rāja's compact Vyavahāra-nirṇaya (c. 1220)[335] is an important source of texts, illustrating the complexion of śāstric learning in South India. The Caturvarga-cintāmaṇi of Hemādri (c. 1340)[336] would rival the Kṛtyakalpataru if it had contained a *vyavahāra* section. His is the only digest of texts (rich in all other aspects of *varṇāśrama-dharma*) which approached the status of being a code. Ṭoḍarmal, finance minister of Akbar, caused one Nīlakaṇṭha to produce digests under the title *-saukhyas* (1572–89)[337]. There are portions of Mitra-miśra's Vīramitrodaya digest

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[331a] Kane, HD, I, §. 73, also 373. L. Rocher, AOR, 13 (1957), 19–41 (on the Vyavahāra-tilaka). See n. 330 a above.

[332] Kane, HD, I, §. 76.

[332a] Ibid., §. 72 (296–7). M. Chakravarti, JASB, 1906, 176; 1915, 327–36. L. Rocher, JOIB, 3/4 (1954), 328–44; 4/1 (1954), 13–32.

[333] Chakravarti JASB, 11 (1915), 357–61. Kane's treatment at HD, I, §. 77 is obsolete in view of B. Bhattacharya, NIA, 2 (1939–40), 208–10; the same, ISPP 7 (1966), 113–22, 451–4; and (subject to the remarks of B.) the introduction to the volumes of the Kṛtyakalpataru by their editor, K. V. R. Aiyangar.

[334] Kane, HD, I, §. 83, cf. §. 82. Dānasāgara, ed. B. Bhattacharya (Calcutta, Bibl. Ind. Ser. no. 274, 1955–6). R. C. Hazra, OH, 8/2 (1960), 89–103 (on the Dānasāgara).

[335] Ignored by Kane in HD, I (see 736), the author is handled well by K. V. R. Aiyangar in his edn. of the Vyavahāra-nirṇaya (Adyar, 1942).

[336] Kane, HD, I, §. 87.

[337] Ibid., §. 104, superseded by P. L. Vaidya's Introduction (and appendices) to his edn. of The Ṭoḍarānanda, Sarga-saukhya and Avatāra-saukhya (= I) (Ganga Or. Ser. 5: Bikaner, 1948). In contrast to the rather bombastic approach of Pratāpa-rudra's paṇḍita-maṇḍala (n. 331 above), and the paternalistic intention of Pṛthvīcandra (below, p. 55), Ṭoḍarmal's paṇḍits (Vaidya indicates how they worked, with rather poor quality assistants, to produce a digest of 80.000 ślokas!) had a more modest intention, worth noting:

(below) which are virtually collections of smṛtis and purāṇas and are thus closer to class *D* than class *E*, but his work as a whole is not essentially a compilation. The Vyavahāra-mālā, a Sanskrit work with Malayālam commentary, belongs to this class, though compiled not earlier than the late eighteenth century[338].

Numerous works emanate from writers within our class *E*. The works of the polymath Bhoja, King of Dhārā (1000–1055), contained much in the area of our *śāstra*, only a fraction of which survives[338a]. Śrīdhara (1150–1200) astounds with his Smṛtyarthasāra[339], transitional in its indecision whether it is a verse or a prose work. It covers a large range of *śāstra*, incidentally resolving doubts, but ignores *vyavahāra*. Devaṇṇa-(or Devanna-)[340]bhaṭṭa's Smṛticandrikā[341] is one of the greater works of the *śāstra*, covering the main areas and giving ample attention to *vyavahāra*. An original mind, with a power of abstraction, organisation, and mature research, he is an authority not surpassed in South India and respected everywhere. In spite of his bulk he eclipsed the Varadarājīyam (above). Śrīdatta's Ācārādarśa (1275–1310)[342], a work of the Mithilā school, is little known. Caṇḍeśvara, likewise from Mithilā, is very well known since his works (ending *-ratnākara*) remain standard digests there. He was a judge, and is one of the few jurists to leave biographical particulars, meagre though they are. He wrote at the command of king Bhaveśa of Mithilā[343]. Of Harinātha's Smṛtisāra (c. 1300–50)[344] only a part is published, giving a unique summary of his predecessor's views on a topic in the law of inheritance. Mādhavācārya *alias* Vidyāraṇya (1330–85) was a minister of the founders of Vijayanagara, and must have compiled his famous commentary on the Parāśara-smṛti, the digest

ādiṣṭe śrutibhiś ciraṃtana-muni-stomair muhuḥ śīlite prācāṃ puṇya-pathe durukti-śatakair mliṣṭe janālasyataḥ |
mālinyānyapanīya saṃgraha-miṣād enaṃ pariṣkurvato bhūyād eṣa pariśramo 'pi jagad-ānandāya bhūmī-pateḥ ||

'The righteous Way of Life of the ancients, proclaimed by the Vedas and practised for long by multitudes of sages through the ages, became indistinct through hundreds of incorrect utterances, due to the public's want of energy; the king [meaning Ṭoḍarmal] caused it to be cleaned from its obscurities and re-presented under the guise of a Digest: may this toil be a joy to the World!' This passage from the introduction to the (unpublished) Śuddhi-saukhya (note the play on 'purity') (see Vaidya, ubi cit., xxix) is interesting, also, by reason of the word *mliṣṭa* ('dirty,' 'indistinct,' 'barbarous') which alludes to the presence of the Mlecchas (Muslims). See n. 369 below.

338 Derrett, RLSI, 261–3, 271.

338a Kane, HD, I, §. 64. The same, JOR 23 (1953–4), 94–127 (on dharma and astrology); ABORI, 36 (1955), 306–39 (texts on *tithi*, *vrata*, and *utsava* collected).

339 Kane, HD, I, §. 81.

340 M. Mayrhofer, Anz. d. phil.-hist. Kl., Oest. Akad. d. Wiss. 108 (1971), 81 n. 15.

341 Kane, HD, I, §. 85.

342 Ibid., §. 89. Chakravarti, JASB, 11 (1915), 379.

343 Kane HD, I, §. 90. Chakravarti, ubi cit., 382–4. B. Bhattacharya, NIA, 5/2 (1942), 36–8; the same, ISPP, 8 (1966–7), 203–9, 243–51; the same, JOR, 36 (1966–7), 3–28. U. Thakur, VIJ, 7/1–2 (1969), 56–68.

344 Kane, HD, I, §. 91. Dh.k. 1530–40.

called Parāśara-mādhavīyam, in response to the needs of the infant empire[345]. Viśveśvara-bhaṭṭa's Madana-pārijāta (1360–90)[346] was patronised by Madanapāla, king of Kāṣṭhā. His subcommentary on the Mitākṣarā, the Subodhinī, proves how even a Deccani work could achieve fame in Northern India. The Madanaratna-pradīpa of Madanasiṃha[347], king of Gorakhpur, was produced by four learned Brahmins including one Viśvanātha. The work (1425–50) is of the same juridical level as the great production of Nīlakaṇṭha (below); two *uddyotas* have been printed[348], and it figured indirectly in a remarkable decision of the Supreme Court in recent years[349]. Of greater fame is the corpus of works of the Bengali jurist Śūlapāṇi (their names end in *-viveka*) which broach juridical problems far wider than the ostensible subject-matter[350]. Śūlapāṇi is to be dated 1375–1460. Vardhamāna (1450–1500) is the primary author on criminal law[350a]. Two more Mithilā jurists of note are Misaru-miśra (c. 1450)[351], author of the Vivādacandra, who wrote under the orders of Lachimā-devī, wife of prince Candra-siṃha, and the much more famous Vācaspati-miśra (1450–80)[352] who wrote a vast number of works in logic and law, amongst which the Vivāda-cintāmaṇi and Vyavahāra-cintāmaṇi are prime sources of *śāstric* knowledge. He was the *pariṣad* (i.e. referee in matters of dharma) of king Harinārāyaṇa. Pṛthvīcandra, king in Bundelkhand, produced the enormous Dharma-tattva-kalānidhi (c. 1470)[353], of which only the Vyavahāra-prakāśa and a fragment of another *prakāśa* have appeared in print. The incipit of the Vyavahāra-prakāśa deserves notice, since it reveals both that a ruler could assume full responsibility for a legal treatise, and why:

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[345] Kane, HD, I, §. 92.

[346] Ibid., §. 93. Viśveśvara was the true author of the Madanamahārṇava, a unique treatise on Karma-vipāka (the cure of diseases by expiating the sins which conduced to them) (ed. E. Krishnamacharya and M. R. Nambiyar, Baroda, 1953 (G. O. S. No. 117)).

[347] Ibid., §. 94.

[348] The Vyavahāra-vivekoddyota by Kane (Bikaner, 1948); the Dāna-vivekoddyota by K. Deshpande and D. G. Padhye (Hyderabad, 1964).

[349] Guramma v. Mallappa, AIR 1964 S. C. 510 (Derrett, RLSI, 310, 415, Critique, 91 n. 6).

[350] Kane, HD, I, §. 95. Chakravarti, JASB, 11 (1915), 336–43. S. C. Banerji, NIA 5/2 (1942), 31–5; ibid., 5/7 (1942), 145–56, 169–76; ibid., 6/8–9 (1943), 197-205 (on Jīmūtavāhana, Śūlapāni, and Raghunandana). See n. 319 above.

[350a] Kane, HD, III, 391 n. 621; I, 736–7. The Daṇḍa-viveka was ed. by K. K. Smṛtitīrtha (Gaekwad Or. Ser. 52: Baroda, 1931) and trans. (Dutch) by L. Rocher, 2 vol. (Thesis, Ghent: Schelle, 1951). L. Rocher, JOIB, 1/3 (1952), 214–24; 2/1 (1952), 71–85; 2/2 (1952), 139–47.

[351] Kane, HD, I, §. 97. Chakravarti, ubi. cit., 403–4.

[352] Kane, HD, I, §. 98. Chakravarti, ubi cit., 394–400. L. Rocher, Introd. to Vyavahāra-cintāmaṇi (Ghent, 1956). G. Jha's trans. of the Vivāda-cintāmaṇi (Baroda, 1942) is an excellent introduction to *śāstric* learning in English.

[353] Ignored in Kane, HD, I. Vyavahāra-prakāśa, pt. 1 (ed. J. H. Dave) (Bombay, Bhār. Vidyā Ser., 1962). J. H. Dave, Bombay Law Reporter, 1953, Journal, 25.

vidvadbhiḥ saha bhū-sūrair anudinaṃ sa prāḍvivākaḥ svayaṃ lobha-krodha-vivarjitaḥ kalayate yaḥ paura-kāryaṃ kṛtī |
dharmādharma-vivecakaḥ kṣiti-bhṛtāṃ san-mārga-dīkṣā-guruḥ Pṛthvīcandra-nareśvaro vyavahṛtiṃ prastauti sat-prītaye ||

'Daily being a presiding judge himself along with learned Brahmins, free from greed and anger, he occupies himself effectively with the business of the city-dwellers: discriminating *dharma* from *adharma*, preceptor for the initiation of kings into the path of the good, King Pṛthvīcandra introduces, for the delight of the good, (the topic of) *vyavahāra*.'

The Nṛsiṃha-prasāda by one passing under the name Dalapati[354] deals, rather briefly, with many aspects of *dharma*, including *vyavahāra*. His patron was Nizam Shah of Devagiri-Daulatābād (either Ahmad or Burhan of that family), and wrote between 1490 and 1512. Muslim rulers of an overwhelmingly Hindu population were sufficiently broadminded. The Sarasvatī-vilāsa, conceived on a grandiose scale by King Pratāparudra of the Gajapati dynasty of Orissa (c. 1500–25)[355], was compiled by a committee under the supervision of Lolla Lakṣmīdhara[356]. Its Vyavahāra-kāṇḍa, whatever might be said of its pedantries, is a treasury of allusions to actual practice, and preserves quotations of works now lost. Govindānanda's Kriyā-kaumudī (1500–40) deals with topics other than *vyavahāra*[357]. Raghunandana, Bengal's most celebrated jurist, called Smārta-bhaṭṭācārya, wrote a series of works called Tattvas in which some aspects of *vyavahāra* figure. He belongs to 1520–70[358]. Kamalākara-bhaṭṭa (1610–40)[359], grandson of Nārāyaṇa-bhaṭṭa[360] the miracle-working son of the founder of the celebrated Mahārāṣṭrian Brahmin family which settled at Benares and produced many jurists, wrote, *inter alia*, the Nirṇaya-sindhu (1612), which partakes of the characteristics of class *C* as well as class *E*, the Vivāda-tāṇḍava,

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[354] Kane, HD, I, §. 99.

[355] Ibid., §. 100. A remark at 412 is misleading: 'The Sarasvatī-vilāsa, being a work composed under the express orders of a king for the benefit of his subjects, makes the nearest approach to the Austinian concept of law as a command addressed by political superiors to political inferiors and enforced by a sanction' (!).

[356] Ignored by Kane. See P. K. Gode, Stud. in Ind. Lit. Hist., I (Bombay, 1953), 423–4.

[357] Kane, HD, I, §. 101. Chakravarti, JASB, 11 (1915), 355. R. C. Hazra, JOR, 18/2 (1951), 97–108. B. Bhattacharya, JOR, 29 (1959–60), 101–107; the same, ISPP, 8 (1966–7), 260–5, 303–30; 9 (1967–8), 1–9.

[358] Kane, HD, I, §. 102. Chakravarti, ubi cit., 351–7. R. C. Hazra, Bhār. Vidyā, 11/3–4 (1950), 178–82. B. Bhattacharya, Raghunandana's Indebtedness to his Predecessors (Calcutta, 1955); the same, 'Studies in Nibandhas,' ISPP 9 (1967–8), 113–17; The Udvāha-tattva was published by H. N. Chatterjee (Cal. Skt. Coll. Res. Ser. 24, Calcutta, 1963) with introd. and apparatus. H. Chatterjee, Studies in Some Aspects of Hindu Saṃskāras in Ancient India (Calcutta, 1965) (based on Raghunandana). S. Chakravarti, Samāj-Sanskārak Raghunandana (Beng.) (Calcutta, 1964). B. Chakravorty, Calcutta Rev. 176 (1965), 177–82 (on R.'s date).

[359] Kane, HD, I, §. 106. B. B. R. A. S. Catal. Skt. Mss., 744 (Kamalākara's Sarva-śāstrārtha-nirṇaya). H. Chatterjee, ed., Vivāda-tāṇḍava, OH, 7/2 (1959); 8/2 (1960); 11/1 (1963); 13/1 (1965) (continuous pagination).

[360] Kane, HD, I, §. 103.

and a treatise on the duties of Śūdras (a favourite topic of the latter days of the *śāstra*) called Śūdra-kamalākara.

Nīlakaṇṭha-bhaṭṭa, most famous member of the same Mahārāṣṭrian family[361], wrote a series of works under the collective name Bhagavanta-bhāskara, called Mayūkhas, about 1610–40. Most would be placed in our class *D*. The Vyavahāra-mayūkha, for long of great authority in Western India, is a prime example of our class *E*. Many of the *prakāśas* of Mitra-miśra's Vīramitrodaya (1610–40) are sophisticated disquisitions of law, arranged systematically as a digest [362]. He is regarded as the last original mind to be applied to fundamental *vyavahāra* problems, e.g. inheritance, before European stimulus affected the balance of interest and the mode of exposition. His acuteness sometimes diminishes the authenticity of his practical conclusions. Mitra-miśra wrote under the patronage of Vīrasiṃha, ruler of Orccha 1605–27. Ananta-deva (c. 1650–75) wrote a series called Smṛti-kaustubha[363], of which the Saṃskāra-kaustubha (including the Dattaka-dīdhiti) and the Rājadharma-kaustubha are best known. His royal patron was Baz Bahadur Candra of Almora-Nainital. Keśava-paṇḍita's Daṇḍa-nīti (? 1681) is a contribution to criminal law owing its inspiration to the needs of the *rājas* of Satara[363a]. Bālaṃbhaṭṭa[364] wrote a commentary on the Mitākṣarā which turned out as a digest, and he attempted to publish it as the work of his mother. Colebrooke[365] commissioned a Dharma-śāstra-saṃgraha from him, but it was not finished. Kāśinātha Upādhyāya wrote a Dharma-sindhu (1790–1) which achieved celebrity in Western India[366]. The verse and prose compilation called Vivādārṇava-setu[367] was the work of a company of *śāstrīs* (1773) employed by Warren Hastings. Jagannātha Tarkapañcānana[368] produced the Vivāda-bhaṅgārṇava in the last decade of the eighteenth century. Its bulk, complexity, and completeness show both what the jurist can marshal, given the space and adequate patronage, and the practicality of putting all such learning onto paper, at least in the chosen areas of contracts and inheritance.

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[361] Kane, HD, I, §. 107. The same, introd., to his edn. of the Vyavahāra-mayūkha (Bombay Skt. Pkt. Ser. 80: Bombay, 1926).

[362] Kane, HD, I, §. 108.

[363] Ibid., §. 109.

[363a] Ed. V. S. Bendrey (Poona, B. I. S. M. ser. no. 59, 1943).

[364] Kane, HD, I, §. 111. Also P. P. S. Sastri, Sarasvati Mahal Library, Cat. Skt. Mss (1934), 3626–7. Derrett, RLSI, 251, 270. S. L. Katre, JOIB, 16 (1967), 315–22 (an attribution to B.).

[365] See last note.

[366] Kane, HD, I, §. 112. A. Bourquin–L. de Milloué, Le Dharma Sindhu, I, Ann. Mus. Guimet 7 (1884), 150–274. See n. 30 above. Referred to by L. da Cunha Gonçalves (see Biblio.) with reference to Goa.

[367] Derrett, RLSI, 239, 240, 244, 250, 271, 273 n.

[368] Kane, HD, I, §. 113. Derrett, RLSI, 245–8. Passing mention must be made of Mayārāma-miśra-gauḍa, Vyavahāra-nirṇaya or Vyavahārāṅga-smṛti-sarvasva (–1798/9) written not under the British but Jayasiṃha (Kane, HD, I, 630–1).

The bulk of works in our class *E* should not lead to any inference that the need for other classes of composition had failed. Works by writers classifiable in our class *B* were produced in 1623 and about 1800, while a work in class *D* appeared in Kerala in the late eighteenth century. Works in class *C* appeared from the end of the eleventh century until the end of *śāstric* writing. Works even in class *A* could be written in the fourteenth century. Works in classes *C* and *E* were made possible by the availability of the digests in our class *D*, and of the techniques of mīmāṃsā and nyāya. A periodical stratification of the literature, such as would identify class-*E* works as the culminating phase, would be erroneous. Commentaries which one would attribute to class *A* can really be identified as sophisticated précis' of work finding expression in the efforts of writers in class *B* and, with much more freedom, in classes *C* and *E*.

From 1675 to about 1800 almost no notable work was produced. Kāśinātha's isolation in 1790–1 is remarkable. Jagannātha would never have thought of his digest without British stimulus. Kane writes[369]: 'They (the *śāstric* authors) preserved Hindu culture and literature in the midst of alien cultures and in spite of bigoted foreign dominion . . . Living as most of the later writers did in the midst of aggression and violently unsympathetic cultures and rulers and possessing no powerful central government that sympathised with their ideals, they were driven more and more to revolve within their narrow grooves and could not see far in order to regulate society in a free and buoyant spirit.' Passing over the unanthropological nature of this evaluation, we may ask why if (as is often alleged), foreign rule hampered the natural development of Hinduism towards 'modernity' and 'enlightenment,' no literature of note appeared while the Moghul empire was at its height, when, indeed, the greater part of India was free from intolerance and political chaos, whereas the bulk of all the literature appeared in Hindu kingdoms or during Hindu independence? The qualities of 'obscurantism' of which the liberal-minded complain when they approach traditional Hindu literature were fully present in all treatises produced under conditions free from the shortcomings to which Kane drew attention. The answer is simple. Great *śāstric* works depended, in practice, not so much on the initiative of their authors as on the liberal patronage of princes. The urge to write was not common, and needed to be well primed. The sale of

[369] Kane, HD, I, 467. K. M. Panikkar, in his Foreword to P. L. Vaidya, ed., Ṭoḍarānanda I (1948), xv, says: 'The Hindu social structure was facing a grave crisis. The egalitarian conception of Islam and its prosyletising activity had created for Hinduism special problems which could not be overlooked. The reaction of Hindu lawgivers to this challenge was in general to make Hinduism more rigid and to re-interpret the rules in such a way as to resist the encroachments of Islam. It is perhaps this defensive attitude towards society that is responsible for the orthodoxy of views which is the characteristic of the Dharma Śāstra literature of this period.' This is guesswork, and not substantiated. What *is* evidenced, from Ṭoḍarmal's paṇḍits' vast attention to the avatāras, including Kalkī, and their occasional references to Mlecchas, is awareness that the Kali Age was working out, seemingly, true to prophecy.

śāstric books was a sin.[370] It would be difficult to indicate the importance of patronage more succinctly.

Before passing on to illustrate the commentators' techniques mention may be made of the notable second life *dharmaśāstra* obtained at the hands of logicians (to which we return), and incidental reference to the Abhilaṣitārtha-cintāmaṇi, or Mānasollāsa, by Someśvara III of the Western Cālukya dynasty (the well-known exponent of music). It is an encyclopedia written, like the *arthaśāstra* works which it exploits in the second *prakaraṇa*, in an objective spirit, without concessions to an overarching theory. It was written about 1052 and, being encyclopedic, had to have a short, rather general, section on legal administration, virtues, and religious rites and charity, and another on the *saṃskāras*.[371] Someśvara did not regard *dharmaśāstra* as a suitable topic for courtly debate and intellectual exercise: it is not clear whether it was his taste or prudence that (for him) excluded this and all other *śāstras* except poetry and logic.

(III) An illustration of commentators' techniques

A history of our *śāstra* can hardly dispense with an example of the material which the orthodox student must study. There are limitless possibilities for illustration. We may take as a suitable example Yājñ. I, 32, with five commentaries. The superiority of the earliest will be evident, as also the appearance (or, surely, re-appearance ?) of new (or rather submerged ?) information in the last. The question whether a *brahmacārī* might attend a *śrāddha* on invitation and partake of the offerings was a matter of doubt[372]. The student was under taboos, and *śrāddhas* were melancholy occasions. To partake was an act depriving the guest himself of some of his occult power, but the more 'holy' the guest the more welcome, the more efficacious the *śrāddha*, for the deceased and, indirectly, for the hosts. Manu II, 189–90 permits a *brahmacārī*, provided he is a Brahmin, to accept such an invitation, on condition that he eats only such food as is consistent with his vows as a *brahmacārī*. This is a sophisticated resolution of the substance of the difficulties which must already have been experienced. Manu III, 186 includes (without comment) the student as a suitable invitee to a *śrāddha*[373]. Manu III, 151 could be understood to advise against inviting a student[374], but this seems incorrect[375]. We now turn to Yājñ. I, 32: it will be

[370] Hemādri, Caturvarga-cintamaṇi, Prāyaścitta-kāṇḍa, 224.

[371] Mānasollāsa, II, xx, 1244–99 (ed. Shama Sastry); III, 1245–1339 (ed. Shirigondekar), 1302–1521 (ed. Shama Sastry).

[372] Kane, HD, IV, 392 (virtually ignoring the topic) omits to show that Manu III, 151 runs contrary to the *śāstra* in other respects. K. did not respond to points of anthropological interest.

[373] Nandana takes *brahmacārī* to mean one who observes certain ascetic practices.

[374] *jaṭilaṃ cānadhīyānaṃ durbalaṃ kitavaṃ tathā |*
yājayanti ca ye pūgāṃs tāṃś ca śrāddhe na bhojayet ||
Every commentary on Manu so takes the word *jaṭilam*. Some astutely confine it, by reading *anadhīyānam* with it, to a *brahmacārī* who is not actually studying (Jha, Manusmṛti, Notes II, 1924, 221–2).

observed how the commentators relate the first and second halfverses to each other.

brahmacarye sthito naikam annam adyād anāpadi |
brāhmaṇaḥ kāmam aśnīyāc chrāddhe vratam apīḍayan ||

'One who adheres to studentship must not eat single food in a time free from distress. A Brahmin may, at his option, eat at a *śrāddha* without infringing his vow'.

Viśvarūpa: 'This relates to a case where one who has no assets requires the means of subsistence. By using the word *sthita* (adheres) he indicates he would be a non-*brahmacārī* if he subsisted in some other manner. By saying "except under conditions of distress *(anāpadi)* he should not eat in one house"[376] he (Yājñavalkya) has provided a facultative rule *(niyama)* which would permit even one who does have some assets to find subsistence by begging, as a counter-exception in a condition of distress (i.e. in a time of distress he *may* eat "single food"). *Brāhmaṇaḥ kāmam aśnīyāt* means when he has arrived to beg and has been invited by blameless hosts. Neither the kingly caste nor Vaiśyas may do this. *Vratam apīḍayan* means not eating honey or meat[377]. Thus says Manu[378], "At his option he may eat, when invited, the food of one man at a rite in honour of the gods, observing his vow, or in honour of ancestors; his vow is not spoiled." And later on, by way of praising Brahmins[379], he shows that the kingly caste and Vaiśyas have no right to such an invitation. Now a penance has been laid down for a student's partaking of a *śrāddha* feast[380]: that must be related to one who has been invited in advance'[381].

Aparārka[382]: 'A *brahmacārī*, otherwise than in a time of distress, should not eat the food of a single person. A *brahmacārī*, if he is a Brahmin, when invited[383], may eat the food of a single person in a time of distress. But if he is to eat at a *śrāddha* then he may eat provided he avoids honey, meat, etc., which would infringe his vow.'

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[375] Apparently unanimous *śāstric* opinion, contrary to the words, which by no means have this implication. Moreover, a survey of the literature on 'who must not be invited' to a *śrāddha* (e.g. Jha, op. cit., Notes, III, 1929, 225–8; Kane, HD, IV, 1953, 391–401), reveals that, not a *brahmacārī*, but a heretic keeping matted hair (cf. Vāyu-purāṇa, LXXVIII, 31) was to be excluded.

[376] Viśvarūpa thus glosses 'single food'.

[377] Prohibited by Yājñ. I, 33 (32 in Viśvarūpa's comm.).

[378] Manu II, 189, but read by Viśvarūpa with *karmaṇy upasthite* (not found elsewhere, Jha, ubi cit., Notes, I, 75) for Kullūka's *atharṣivat*.

[379] Unless it was a *stuti*, II, 190cd would be superfluous, which cannot be allowed.

[380] Manu XI, 158; Viṣṇu LI, 43–44 (Vaijayanti, ibid., cites Yama); Vas. XXIII. 12. Viśvarūpa cites neither texts nor authors.

[381] Bhār. explains Manu XI, 158 as applying to a *brahmacārī* who partakes after an invitation he has himself requested: and cites Manu III, 234 which authorises a student who is a daughter's son to be invited. No commentator on Manu takes Viśvarūpa's point.

[382] Text (1903), I, 61.

[383] Silent reference to Manu II, 189.

Vijñāneśvara[384]: 'One who "adheres to studentship" must not eat "single food"[385] except in time of distress, i. e. in the absence of disease, etc. However, a Brahmin having been invited to a *śrāddha* may eat "at his option." "Without infringing his vow" means avoiding honey and meat. The word "Brahmin" here is intended to exclude Kṣatriyas and the rest from eating at a *śrāddha*. For there is a *smṛti*[386] which says "the kingly caste and the Vaiśya only: for the two this ritual is not ordained."'

Śūlapāṇi[387]: '"Single food" means begging from one person. "At his option" means according to his pleasure, except for honey, meat, etc. "At a *śrāddha*" implies a Brahmin only. The kingly caste and the Vaiśya are excluded. For Manu has said "the kingly caste and the Vaiśya only: for these two this ritual is not ordained."'

Mitra-miśra[388] has a fullness of his own, differing from Viśvarūpa. He explains 'single' as meaning 'of one owner;' 'in a time free from distress' means where other food can be had. The meaning is that one should not eat the same man's food two days running. But this would not apply to a Brahmin student, provided he avoids honey, meat, etc. The words 'at his option' mean that even when he is invited he has the right to refuse, for there is a text in another *smṛti* which forbids a student to eat at a *śrāddha*[389].

8. Qualities and potentialities of the literature

In the seventeenth century smṛti texts were taken up by specialists in navya-nyāya, the New Logic, in order that they might investigate legal institutions. The resulting studies, in which the smṛtis are accepted as valid, but the institutions are defined in a new way, returned to *dharmaśāstra* schools and affected many later *śāstrīs*. The texts we have await systematic study[390].

As an introduction to Indology the smṛti literature has its part to play. In comparative jurisprudence it has a strong claim, as yet not pursued by specialists for want of a sufficiently convenient access to the Sanskrit originals. Historians of law are at a disadvantage in that neither the smṛtis, nor digests or

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384 Mitākṣarā on Yājñ. I, 32.

385 The editor glosses *ekānnam* as *eka-svāminam*, explaining that it means 'obtained by begging from one person.' Bālaṃbhaṭṭa (ed. Gharpure, I, Bombay, 1914), 161.

386 Manu II, 190cd.

387 Text (1939), 5. S. C. Vidyārṇava's trans. of Yājñ. (1918), 80, may also be consulted.

388 Text (Benares, 1924), 94; trans. Gharpure (1936), 124–5.

389 An allusion to Manu III, 151, and see n. 380 above.

390 Svatva-vicāra: text ed. Derrett, Pt. Charu Deva Shastri Fel. Vol. (Delhi, 1973), vol. I; trans. Derrett, BSOAS, 18/3 (1956), 486–98; Svatva-rahasya: Derrett, AOR 13 (1957), 42–8. H. C. Smṛtitīrtha, 'Svatvavāda-praveśaka' (Beng.), OH, 9/2 (1961)–10/2 (1962). Gadādhara-bhaṭṭāchārya, Vivāha-vādārthaḥ, ed. H. N. Chatterji, Saṃskṛta Sāhitya Pariṣat Patrikā (Calcutta) (see also the same, Raghunandana, Udvāha-tattva, 145 n.); Derrett ed. text and trans., ALB, 1963, 171–199.

commentaries, undertake to give a full picture of law-in-action. The contribution to the *śāstra* of inscriptional evidence is as yet unexplored.

To this day a substantial flow of publication of little books on the ritual aspects of the *śāstra* continues[391], but this has no effect upon legal studies.

The effects of Anglo-Indian administration are diminishing with the gradual obsolescence of Anglo-Hindu law. The erroneous identification of certain works as peculiarly, and exclusively, recording the law in certain areas of India, and the invention of 'schools of Hindu law,' was an intellectual disservice to the literature, which operated broadly as an all-India medium of communication and debate[392]. The sub-literature of Court pandits' *vyavasthās*, and *vyavasthās* provided for litigants has its own interest, but it was coloured strongly by the Anglo-Indian courts' predetermined fancies as to which texts should be relied upon and in which way. The disgust felt by many British observers of pandits' methods greatly discouraged research in Britain, which was confined to two men[393] (with Horace Hayman Wilson as an able third). The life of one was cut short by an accident (Ellis), the other (Colebrooke) died a disappointed man: the indifference to indigenous Indian law of which he complained has hardly lifted; but the disappearance of Hindu law when the family laws of India are codified may do much to re-encourage scholarly investigation of a technical subject, for the first time removed from practical considerations[393a]. The persistence in modern India of principles and prejudices, for which the *śāstra* gives abundant documentation, should add to its intrinsic value.

If the reader can detach himself from that which the anthropologist will find most useful, namely the detailed rules, he will find in India's response to the challenge of her size, her complexity, and her special requirement of an overarching system of righteousness a unique chapter in human experience. Now the status of the *śāstra* depends not on its being accepted by the prestige-holding classes of a disparate population, but rather on the discrimination, and aptitude for gainful comparison, possessed by future savants of all races and every tradition.

A history of any part of a literature, and especially one which was at every stage technical, cannot end without a frank comment on the state of secondary sources. Righteousness is an aspect of a civilization which, however technically handled by the native scholars of that civilization's great days, must make a claim upon the attention of anyone who, coming from a foreign clime and a

[391] Śivanārāyaṇa Śāstrī, Nitya-karma-prayoga-mālā (Bombay, 1964); Tulsivivāha-vidhiḥ (Bombay, 1955); Caturthilāl, Upanayana-paddhati (Bombay, 1957); Vastu-śānti-prayoga (Bombay, 1958); Yajurvediyāhnikam (Madras, 1959); Śaṅkara-rāma Śāstrī, ed., Yajurvediyopakarma-prayoga (Madras, 1958).

[392] L. Rocher, 'Schools of Hindu Law,' India Maior (Jan Gonda Fel. Vol.) (Leiden, 1972), 167–76.

[393] H. T. Colebrooke (1765–1836) and F. W. Ellis (d. 1819). On the latter see references at Derrett, RLSI, 259 nn. Also Trans. Madras Lit. Soc. I, 1–25.

[393a] K. V. R. Aiyangar, Preface to Kṛtyakalpataru, Vyavahāra-kāṇḍa (1953), viii.

distant era, hopes to penetrate that civilization's quality and tone[394]. Before he gains confidence he must have acquainted himself with the original materials, and he cannot ignore detail (however wearisome) in the way that he could ignore the detail of the sciences of cooking, for example, and farriery (not to speak of India's luxuriant *gaja-śāstra*). A bibliography, such as is appended, must include all well-intentioned works of any magnitude, evidencing sustained attention by competent persons. The student will not have penetrated far into *dharmaśāstra* before he realizes that these have been very few, and that one towers so far above the rest as to make it essential to comprehend his methods, motives, and limitations. P. V. Kane's History of Dharmaśāstra was confined substantially, as he himself says, to *ācāra* and *vyavahāra;* yet it contains a great deal more, and at times wanders into fields in which Kane cannot have hoped to say anything like the final word. Yet the mutual disparagement in which he, S. C. Banerji, and R. C. Hazra indulge, and the grounds on which it is based, have a dispiriting effect. Kane's general criticism of 'Western scholars' is well founded. They were content, for reasons of their own (and this applied to Jolly, Meyer, and even Bühler, not to mention more fitful contributions), to make large generalisations and massive conjectures, which a better acquaintance with the enormously varied and scattered materials would have forbidden[395]. Kane was jealous of a fellow researcher, unless the latter confined himself to first-hand labour in discovering truth, and showed the devotion, patience, and organization which Kane himself displayed in a unique degree. Kane was also disgusted with the occasional disparagement of Indian texts, ideas, standards, and scholarship on the part of Europeans and Americans; but in his turn he reacted, in what he would call a 'subjective' manner, to claims that the West anticipated many developments that flowered in India. Since Kane was an encyclopedist it is possible to find the occasional gap in his work, but very difficult to fault him in completeness of documentation and sober assessment of the results. This has frustrated a desire to do original work on the part of Hindu scholars of his own day, a frustration leading to unedifying friction. Without the warning, and encouragement, that follows, however, European and American scholars as well as Indians, will be faced with the alternative of servile accommodation to Kane's results, and imitation of his approach to a subject he made uniquely his own (for no one will know all Kane knew), or abandoning the subject entirely. It is, therefore, essential to point out that, whereas no beginner can commence anywhere so appropriately as he can with Kane, the opportunity for him to make original contributions to the subject is not precluded by Kane's achievement, still less by that of his rivals. This is because Kane's approach was, as

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[394] As knowledge of the contemporary law of 'spousals' is necessary to appreciate works of Shakespeare and Webster, so without a knowledge of smṛti even Kālidāsa is obscure: V. Raghavan, JBBRAS, 29/2 (1954), 55–57. Likhita's hands were cut off for theft (Mahābhārata XII, 24, 2–27 (crit. edn.)), comprehensible in the light of smṛtis quoted by Jha, HLS, I, 446–62.

[395] For examples of his censure see Kane, HD, I², 185–9, 343.

we have seen, devoid of anthropological or sociological awareness[396]; his approach to any Indian matter was essentially defensive[397]; and he imagined that the *vyavahāra* sources he handled were legal texts; and, worse still, he neglected to consider seriously the gap between profession and performance, which is not a shameful (as he suspected) but an interesting feature of the civilization, criticism of which offended him[398]. This leaves, to those patient enough to learn from his, and his rivals', references, a vast field of original discovery and comparative investigation which can, on the one hand (as Kane would have wished) eschew wild conjectures, and on the other enable the Sanskrit sources to speak in a voice which has been their own, but has been silent too long.

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[396] The comment made by Kane, at HD, I², 413 on Hemādri's (alleged) concept of priorities typifies the naivety lying behind massive learning. On his selectivity see R. C. Hazra, OH, 17/2 (1969), 74.

[397] Observe the comment at Kane, HD, I², 232 (persecution of the Jews!).

[398] Kane, HD, III, 60.

ABBREVIATIONS

AB	Aitareya-brāhmaṇa
ABORI	Annals of the Bhandarkar Oriental Research Institute (Poona)
AIR	All India Reporter (Nagpur)
AOR	Annals of Oriental Research (Madras)
Āp.	Āpastamba-dharma-sūtra
Baudh.	Baudhāyana-dharma-sūtra
BDCRI	Bulletin of the Deccan College Research Institute (Poona)
Bhār.	Bhāruci's Manu-śāstra-vivaraṇa*
Bṛh.	Bṛhaspati-smṛti
BSOAS	Bulletin of the School of Oriental and African Studies (London)
Dh.k.	Dharma-kośa, Vyavahāra-kāṇḍa (3 vols. continuous pagination)
DS.	S. C. Banerji, Dharma Sūtras
Gaut.	Gautama-sūtra
HD	P. V. Kane, History of Dharmaśāstra
HLS	G. Jha, Hindu Law in its Sources
IC	Indian Culture
IHQ	Indian Historical Quarterly
IIJ	Indo-Iranian Journal
ISPP	Indian Studies, Past and Present (Calcutta)
JA	Journal asiatique (Paris)
JAOS	Journal of the American Oriental Society
JAS	Journal of the (Calcutta) Asiatic Society
JASB	Journal of the Asiatic Society of Bengal
JBBRAS	Journal of the Bombay Branch of the Royal Asiatic Society
JESHO	Journal of the Economic and Social History of the Orient
JGJRI	Journal of the Ganganath Jha Research Institute (Patna)
JIH	Journal of Indian History (Trivandrum)
JOIB	Journal of the Oriental Institute (Baroda)
JOR	Journal of Oriental Research (Madras)
JRAS	Journal of the Royal Asiatic Society (London)
Kāty.	Kātyāyana-smṛti
Ker.	Kerala
LQR	Law Quarterly Review
Mad.	Madras
Medh.	Medhātithi (-bhāṣya)
Nār.	Nārada-smṛti
NIA	New Indian Antiquary (Calcutta)
OH	Our Heritage (Calcutta)
PLD	All-Pakistan Legal Decisions
RLSI	Derrett, Religion, Law and the State in India

* The text is awaiting publication by the Südasien Institut, Heidelberg; the Ms (devanāgarī) is available at the School of Oriental & African Studies (London). Another copy of the original (at Trivandrum) is at the Bhāratīya Vidyā Bhavan (Bombay).

ŚB.	Śatapatha-brāhmaṇa
SBE	Sacred Books of the East (Oxford)
TS	Taittirīya-saṃhitā
Vas.	Vasiṣṭha-dharma-sūtra
VIJ	Viśveśvarānand Indological Journal
WZKSO	Wiener Zeitschrift für die Kunde Süd- und Ostasiens
Yājñ.	Yājñavalkya-smṛti
ZDMG	Zeitschrift der Deutschen Morgenländischen Gesellschaft
ZVR	Zeitschrift für vergleichende Rechtswissenschaft

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